

**RECORD OF TRIAL
COVER SHEET**

**IN THE
MILITARY COMMISSION
CASE OF**

**UNITED STATES
V.
ABDUL ZAHIR**

ALSO KNOWN AS:

ABDUL BARI

No. 060001

VOLUME ____ OF ____ TOTAL VOLUMES

**1ST VOLUME OF REVIEW EXHIBITS (RE):
RES 1-24**

**APRIL 4, 2006 SESSION
(REDACTED VERSION)**

United States v. Abdul Zahir, No. 060001

INDEX OF VOLUMES

A more detailed index for each volume is included at the front of the particular volume concerned. An electronic copy of the redacted version of this record of trial is available at <http://www.defenselink.mil/news/commissions.html>.

Some volumes have not been numbered on the covers. The numerical order for the volumes of the record of trial, as listed below, as well as the total number of volumes will change as litigation progresses and additional documents are added.

After trial is completed, the Presiding Officer will authenticate the final session transcript and exhibits, and the Appointing Authority will certify the records as administratively complete. The volumes of the record of trial will receive their final numbering just prior to the Appointing Authority's administrative certification.

Transcript and Review Exhibits are part of the record of trial, and are considered during appellate review. Volumes I-VI, however, are allied papers and as such are not part of the record of trial. Allied papers provide references, and show the administrative and historical processing of a case. Allied papers are not usually considered during appellate review. *See generally United States v. Gonzalez*, 60 M.J. 572, 574-575 (Army Ct. Crim. App. 2004) and cases cited therein discussing when allied papers may be considered during the military justice appellate process, which is governed by 10 U.S.C. § 866). For more information about allied papers in the military justice process, see Clerk of Military Commission administrative materials in Volume III.

VOLUME
NUMBER

SUBSTANCE OF CONTENTS

ALLIED PAPERS Not part of "record of trial"

- | | |
|-----------------------|--|
| I¹ | Military Commission Primary References (Congressional Authorizations for Use of Force; Detainee Treatment Act; UCMJ articles; President's Military Order; Military Commission Orders; DoD Directive; Military Commission Instructions; Appointing Authority Regulations; Presiding Officer Memoranda—includes DoD rescinded publications) |
| II¹ | Supreme Court Decisions: <i>Rasul v. Bush</i>, 542 U.S. 466 (2004); <i>Johnson v. Eisentrager</i>, 339 U.S. 763 (1950); <i>In re Yamashita</i>, 327 U.S. 1 (1946); <i>Ex Parte Quirin</i>, 317 U.S. 1 (1942); <i>Ex Parte Milligan</i>, 71 U.S. 2 (1866) |

¹ Interim volume numbers. Final numbers to be added when trial is completed.

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² Interim volume numbers. Final numbers to be added when trial is completed.

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[REDACTED]

TO THE SECRETARY OF DEFENSE:

Based on the information available to me from all sources, including the factual summary from the Department of Defense Criminal Investigation Task Force dated June 17, 2004 and forwarded to me by you by letter dated June 29, 2004;

Pursuant to the Military Order of November 13, 2001 on "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism";

In accordance with the Constitution and consistent with the laws of the United States, including the Authorization for Use of Military Force Joint Resolution (Public Law 107-40);

I, GEORGE W. BUSH, as President of the United States and Commander in Chief of the Armed Forces of the United States, hereby DETERMINE for the United States of America that in relation to Abdul Zahir, Department of Defense Internment Serial No. [REDACTED] who is not a United States citizen:

- (1) There is reason to believe that he, at the relevant times:
- (a) is or was a member of the organization known as al Qaida;
 - (b) has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or
 - (c) has knowingly harbored one or more individuals described in subparagraphs (a) or (b) above.
- (2) It is in the interest of the United States that he be subject to the Military Order of November 13, 2001.

Accordingly, it is hereby ordered that, effective this day, Abdul Zahir shall be subject to the Military Order of November 13, 2001.


DATE: July 6, 2004

White House Office-controlled Document

[REDACTED]

UNITED STATES OF AMERICA)	
v.)	CHARGES:
)	CONSPIRACY; AIDING
)	THE ENEMY;
)	ATTACKING CIVILIANS
ABDUL ZAHIR)	
a/k/a Abdul Bari)	

JURISDICTION

1. Jurisdiction for this Military Commission is based on the President's determination of July 6, 2004 that Abdul Zahir (a/k/a Abdul Bari, hereinafter "Abdul Zahir") is subject to his Military Order of November 13, 2001.
2. Abdul Zahir's charged conduct is triable by a military commission.

GENERAL ALLEGATIONS

3. Al Qaida ("the Base"), was founded by Usama bin Laden and others in or about 1989 for the purpose of opposing certain governments and officials with force and violence.
4. Usama bin Laden is recognized as the *emir* (prince or leader) of al Qaida.
5. A purpose or goal of al Qaida, as stated by Usama bin Laden and other al Qaida leaders, is to support violent attacks against property and nationals (both military and civilian) of the United States and other countries for the purpose of, *inter alia*, forcing the United States to withdraw its forces from the Arabian Peninsula and in retaliation for U.S. support of Israel.
6. Al Qaida operations and activities are directed by a *shura* (consultation) council composed of committees, including: political committee; military committee; security committee; finance committee; media committee; and religious/legal committee.
7. Between 1989 and 2001, al Qaida established training camps, guest houses, and business operations in Afghanistan, Pakistan, and other countries for the purpose of training and supporting violent attacks against property and nationals (both military and civilian) of the United States and other countries.

RE 2 (Zahir)
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8. In August 1996, Usama bin Laden issued a public "*Declaration of Jihad Against the Americans*," in which he called for the murder of U.S. Military personnel serving on the Arabian peninsula.
9. In February 1998, Usama bin Laden, Ayman al Zawahiri, and others under the banner of "International Islamic Front for Fighting Jews and Crusaders," issued a *fatwa* (purported religious ruling) requiring all Muslims able to do so to kill Americans – whether civilian or military – anywhere they can be found and to "plunder their money."
10. On or about May 29, 1998, Usama bin Laden issued a statement entitled "The Nuclear Bomb of Islam," under the banner of the "International Islamic Front for Fighting Jews and Crusaders," in which he stated that "it is the duty of the Muslims to prepare as much force as possible to terrorize the enemies of God."
11. Since 1989 members and associates of al Qaida, known and unknown, have carried out numerous terrorist attacks, including, but not limited to: the attack against the American Embassies in Kenya and Tanzania in August 1998; the attack against the *USS COLE* in October 2000; and the attacks on the United States on September 11, 2001.

CHARGE 1: CONSPIRACY

12. Abdul Zahir (a/k/a Abdul Bari), in Afghanistan and other countries, from on or about 1997 to on or about July 2002, willfully and knowingly joined an enterprise of persons who shared a common criminal purpose and conspired and agreed with Usama bin Laden, Sheikh Sayeed al Masri, Abdul Hadi al Iraqi (a/k/a Qutaiba), Mohammad Dawood, Abdul Wakil al Somali, Abdul Rauf, Mohammad Agha, Mohammad Rahim, Abdul Kabir (a/k/a Qari Bilal, a/k/a Zelee Gul), Abdul Hakim, Abdul Malik, Abdul Kayum and Saeed Ahmad Agha, and other members and associates of the al Qaida organization, known and unknown, to commit the following offenses triable by military commission: attacking civilians; attacking civilian objects; murder by an unprivileged belligerent; destruction of property by an unprivileged belligerent; and terrorism, said conduct being in the context of and associated with armed conflict.
13. In furtherance of this enterprise and conspiracy, Abdul Zahir and other members of al Qaida committed the following overt acts:
 - a. In 1997, Abdul Zahir served as a translator for the Taliban at the General Gada Guest House in Kabul, where he worked for one year. He was paid 1000 to 1500 Pakistani rupees per month for his services. He was later chosen to work as a translator and money courier for Abdul Hadi al Iraqi, a commander and accountant for al Qaida, who ran the Ashara Guest House in Kart-E-Parwan Province in Kabul, Afghanistan.

- b. Abdul Zahir paid salaries to al Qaida members and bought food and supplies for the Ashara guest house. For this service, al Qaida paid Abdul Zahir an additional salary of 4000 Pakistani rupees per month.
- c. Shortly after September 11, 2001, Abdul Hadi al Iraqi told Abdul Zahir and other Arab members of al Qaida to lie to the Afghans regarding al Qaida's responsibility for the September 11, 2001 attacks.
- d. In early 2002, Abdul Zahir traveled from Lowgar, Afghanistan to Peshawar, Pakistan and joined Abdul Hadi al Iraqi and others to plan explosives attacks against U.S. forces and civilian foreigners in the Zormat and Paktia provinces in Afghanistan. Abdul Zahir remained with this terrorist cell until his capture in July 2002.
- e. For approximately 60,000 Pakistani rupees, Abdul Zahir purchased a photocopy machine to mass produce anti-American leaflets. These leaflets were designed to recruit anti-American Afghans living near the U.S. Embassy in Kabul, Afghanistan and the U.S. military bases in Bagram and Gardez, Afghanistan to plan and conduct operations against U.S. soldiers, and to spread anti-American propaganda.
- f. Al Qaida entrusted Abdul Zahir with \$50,000.00 and directed he use this money to fund terrorist acts against coalition forces. In support of terrorist operations, on at least six separate occasions, Abdul Zahir paid money to other members of the terrorist cell. Furthermore, he maintained an accounting ledger book detailing money transactions in support of terrorist operations.
- g. Al Qaida provided Abdul Zahir a satellite telephone and a list of terrorist cell members' aliases and their corresponding real names. To avoid detection by coalition forces, terrorist cell members including Abdul Zahir used aliases during their communications. Abdul Zahir used the phone and aliases to communicate with members of the terrorist cell, informing them of upcoming missions, logistics, and business transactions.
- h. On or about March 4, 2002, Abdul Zahir, Abdul Kabir and Abdul Hakim conducted a terrorist operation in Zormat, Afghanistan, targeting a passing vehicle carrying civilian foreigners traveling north towards Gardez, Afghanistan. They threw a grenade through the window of this vehicle, injuring the three journalists inside.
- i. In July 2002, at the time of his capture in Lowgar, Afghanistan, Abdul Zahir possessed approximately \$10,000.00 USD, a photocopy machine and an accounting ledger.

CHARGE 2: AIDING THE ENEMY

14. Abdul Zahir (a/k/a Abdul Bari), in Afghanistan from in or about 1997 to July 2002, intentionally aided the enemy, to wit: al Qaida and the Taliban, such conduct taking place in the context of and associated with armed conflict.

CHARGE 3: ATTACKING CIVILIANS

15. Abdul Zahir (a/k/a Abdul Bari), in Afghanistan on or about March 4, 2002, as a perpetrator, co-conspirator, member of an enterprise of persons who shared a common criminal purpose, an aider or abettor, or some combination thereof, attacked civilians traveling north towards Gardez, Afghanistan in a passing vehicle, such conduct taking place in the context of and associated with armed conflict.

FOR OFFICIAL USE ONLY

Military Commission Case No. 06-001

UNITED STATES)

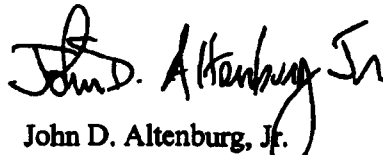
v.)

ABDUL ZAHIR)
a/k/a Abdul Bari)

Approval of Charges

January 18, 2006

The charges against Abdul Zahir (a/k/a Abdul Bari) are approved. Referral for trial and appointment of a panel of officers to serve as a Military Commission will be published in a separate order.



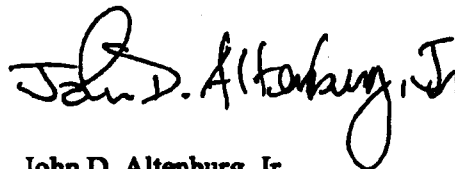
John D. Altenburg, Jr.
Appointing Authority
for Military Commissions

[REDACTED]

Military Commission Case No. 06-0001

UNITED STATES)	
)	
v.)	
)	Referral
ABDUL ZAHIR)	
a/k/a Abdul Bari)	JAN 18 2006
)	

The charges against Abdul Zahir (a/k/a Abdul Bari) are referred, as a noncapital case, to the Military Commission identified in Appointing Order No. 06-0001. As soon as practicable, the Presiding Officer will conduct those sessions he deems appropriate to ensure the expeditious conduct of the trial.



John D. Altenburg, Jr.
Appointing Authority
for Military Commissions

v.

Military Commission Members

Appointing Order No. 06-0001

JAN 18 2006

In the event that one or more of the members, not including the Presiding Officer, is removed by the Appointing Authority, one or more of the alternate members will automatically be appointed, in order, to replace the removed member(s), until either all removed members have been replaced or no alternate members remain. Should the Presiding Officer grant a challenge for cause against any member, that member will be removed as a member, excused from further proceedings, and automatically replaced by the next alternate member. Any alternate member appointed under the automatic replacement provisions herein described shall become a member of the commission and shall be subject to removal and automatic replacement as if originally appointed as a member. In accordance with Paragraph 4(A)(1)&(2) of Military Commission Order No. 1, should no alternate member be available to replace any member I remove or any member removed pursuant to a challenge for cause, and provided that at least three members, in addition to the Presiding Officer, remain, the commission may proceed without appointment of additional members.

Lieutenant Colonel [REDACTED] USMC, Second Alternate Member

Appointing Authority ~~for Military Commissions~~



**DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF DEFENSE COUNSEL
1620 DEFENSE PENTAGON
WASHINGTON, DC 20301-1620**

13 February 2006

MEMORANDUM DETAILING DEFENSE COUNSEL

To: Lieutenant Colonel Thomas Bogar, JA, USAR

Subj: Detailing Letter Regarding Military Commission Proceedings of Abdul Zahir

1. Pursuant to the authority granted to me by my appointment as Chief Defense Counsel; Sections 4.C and 5.D of Military Order No. 1, dated August 31, 2005, and Section 3.B(8) of Military Commission Instruction No. 4, dated September 16, 2005, you are hereby detailed as Military Counsel for all matters relating to Military Commission proceedings involving Abdul Zahir. Your appointment exists until such time as any findings and sentence become final as defined in Section 6.H(2) of Military Commission Order No. 1, unless you are excused from representing Mr. Zahir by a competent authority.
2. In your representation of Mr. Zahir, you are directed to review and comply with the President's Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," 66 Fed. Reg. 57,833 (Nov. 16, 2001), Military Commission Orders Nos. 1 and 3, Military Commission Instructions 1 through 9, and all Supplementary Regulations and Instructions issued in accordance therewith. You are directed to ensure that your conduct and activities are consistent with all applicable prescriptions and proscriptions.
3. You are directed to inform Mr. Zahir of his rights before a Military Commission. In the event that Mr. Zahir chooses to exercise his rights to Selected Military Counsel or his right to Civilian Defense Counsel as his own expense, you shall inform me as soon as possible.
4. In the event that you become aware of a conflict of interest arising from the representation of Mr. Zahir before a Military Commission, you shall immediately inform me of the nature and facts concerning such conflict. You should be aware that in addition to your State Bar and Service Rules of Professional Conduct, that by virtue of your appointment to the Office of Military Commissions you will be attached to the Defense Legal Services Agency and will be subject to professional supervision by the Department of Defense General Counsel.
5. You are directed to inform me of all requirements for personnel, office space, equipment, and supplies necessary for preparation of the defense of Mr. Zahir.

RE 6 (Zahir)
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Dwight H. Sullivan
Colonel, United States Marine Corps Reserve

cc:

Colonel Morris Davis

Brigadier General Thomas L. Hemingway

Mr. [REDACTED]

UNITED STATES OF AMERICA

v.

**ABDUL ZAHIR
aka Abdul Bari**

Protective Order # 1

**Protection of Identities of
All Witnesses**

31 January 2006

This Protective Order has been issued pursuant to Commission Law sua sponte by the Presiding Officer to ensure the protection of information, and so that the parties may begin the discovery process thus ensuring a full and fair trial. Counsel who desire this order modified or rescinded shall follow the Procedures in POM 9-1.

1. This Protective Order protects the identities or other identifying information of all individuals identified in materials provided to the Defense by the prosecution. In addition, this Order also applies to any identifying information obtained by the Defense during their independent discovery efforts.
2. The names and background information of witnesses are considered sensitive material that constitutes Protected Information in accordance with Military Commission Order No. 1, Section 6(D)(5).
3. Accordingly, IT IS HEREBY ORDERED:
 - a. Names or other identifying information of witnesses that have been or may, from time to time, be disseminated to or obtained by the Defense Counsel for the accused, may be disclosed to members of the Defense team, such as paralegals, investigators, and administrative staff, with an official need to know. However, such information shall not be disclosed to the accused or to anyone outside of the Defense team other than the Military Commission panel subject to the limitations below;
 - b. Names or other identifying information of any witness shall not be disclosed in open court or in any unsealed filing. Any mention of the name or other identifying information of witnesses must occur in closed session and any filing to the Military Commission panel that includes such information shall be filed under seal; and
 - c. Either party may file a motion for appropriate relief to obtain an exception to this Order should they consider it necessary for a full and fair trial.
4. Any breach of this Protective Order may result in disciplinary action or other sanctions.

IT IS SO ORDERED

**R.S. Chester
Colonel, U.S. Marine Corps
Presiding Officer**

**RE 7 (Zahir)
Page 1 of 1**

UNITED STATES OF AMERICA

v.

**ABDUL ZAHIR
aka Abdul Bari**

**Protective Order # 2
Protection of Identities of
Investigators and Interrogators**

31 January 2006

This Protective Order has been issued pursuant to Commission Law sua sponte by the Presiding Officer to ensure the protection of information, and so that the parties may begin the discovery process thus ensuring a full and fair trial. Counsel who desire this order modified or rescinded shall follow the Procedures in POM 9-1.

1. This Protective Order protects the identities of law enforcement, intelligence, or other investigators and interrogators working on behalf of their government (collectively referred to as "investigators and interrogators") who participated in the investigation of the accused.
2. The names and background information of investigators and interrogators are considered sensitive material that constitutes Protected Information in accordance with Military Commission Order No. 1, Section 6(D)(5).
3. Accordingly, IT IS HEREBY ORDERED:
 - a. Names or other identifying information of investigators and interrogators that have been or may, from time to time, be disseminated to Defense Counsel for the accused, may be disclosed to members of the Defense team, such as paralegals, investigators, and administrative staff, with an official need to know. However, such information shall not be disclosed to the accused or to anyone outside of the Defense team other than the Military Commission panel subject to the limitations below; and
 - b. Names or other identifying information of investigators and interrogators shall not be disclosed in open court or in any unsealed filing. Any mention of the name or other identifying information of investigators and interrogators must occur in closed session and any filing to the Military Commission panel that includes such information shall be filed under seal.
4. The following actions do not violate this protective order:
 - a. Showing pictures of individuals who had questioned the accused for the purposes of discussing the nature of those interrogations with the accused;
 - b. Using "nicknames" or any other name (aliases) that the individual who questioned the accused told to the accused when questioned. This does NOT

RE 8 (Zahir)
Page 1 of 2

include any name that the accused may have learned through some other means other than the individual themselves; and

c. Using physical descriptions of the individual who questioned the accused for the purposes of the defense discussing with the accused that specific interrogation.

5. The protective order protects the true identities of the individual from release to the accused and the public and of course any private information relating to the individual (family names, addresses, phone numbers, etc.).

6. Either party may file a motion for appropriate relief to obtain an exception to this Order should they consider it necessary for a full and fair trial.

7. Any breach of this Protective Order may result in disciplinary action or other sanctions.

IT IS SO ORDERED

R.S. Chester
Colonel, U.S. Marine Corps
Presiding Officer

UNITED STATES OF AMERICA

v.

ABDUL ZAHIR
aka Abdul Bari

Protective Order # 3

Protection of "For Official Use Only" or "Law Enforcement Sensitive" Marked Information and Information with Classified Markings

31 January 2006

This Protective Order has been issued pursuant to Commission Law sua sponte by the Presiding Officer to ensure the protection of information, and so that the parties may begin the discovery process thus ensuring a full and fair trial. Counsel who desire this order modified or rescinded shall follow the Procedures in POM 9-1.

1. **Generally:** The following Order is issued to provide general guidance regarding the below-described documents and information. Unless otherwise noted, required, or requested, it does not preclude the use of such documents or information in open court.

2. **Scope:** This Order pertains to information, in any form, provided or disclosed to the defense team in their capacity as legal representatives of the accused before a military commission. Protection of information in regards to litigation separate from this military commission would be governed by whatever protective orders are issued by the judicial officer having cognizance over that litigation.

3. **Definition of Prosecution and Defense:** For the purpose of this Order, the term "Defense team" includes all counsel, co-counsel, counsel, paralegals, investigators, translators, administrative staff, and experts and consultants assisting the Defense in Military Commission proceedings against the accused. The term "Prosecution" includes all counsel, co-counsel, paralegals, investigators, translators, administrative staff, and experts and consultants who participate in the prosecution, investigation, or interrogation of the accused.

4. **Effective Dates and Classified Information:** This Protective Order shall remain in effect until rescinded or modified by the Presiding Officer or other competent authority. This Order shall not be interpreted to suggest that information classified under the laws or regulations of the United States may be disclosed in a manner or to those persons inconsistent with those statutes or regulations.

5. **UNCLASSIFIED SENSITIVE MATERIALS:**

- a. IT IS HEREBY ORDERED that documents marked "For Official Use Only (FOUO)" or "Law Enforcement Sensitive" and the information contained therein shall be handled strictly in accordance with and disseminated only pursuant to the limitations contained in the Memorandum of the Under Secretary of Defense ("Interim Information Security Guidance") dated April 18, 2004. If either party disagrees with the marking of a document, that party must continue to handle that document as marked unless and until proper authority removes such marking. If either party

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wishes to disseminate FOUO or Law Enforcement Sensitive documents to the public or the media, they must make a request to the Presiding Officer.

- b. IT IS FURTHER ORDERED that Criminal Investigation Task Force Forms 40 and Federal Bureau of Investigation FD-302s provided to the Defense shall, unless classified (marked "CONFIDENTIAL," "SECRET," or "TOP SECRET"), be handled and disseminated as "For Official Use Only" and/or "Law Enforcement Sensitive."

6. CLASSIFIED MATERIALS:

- a. IT IS FURTHER ORDERED that all parties shall become familiar with Executive Order 12958 (as amended), Military Commission Order No. 1, and other directives applicable to the proper handling, storage, and protection of classified information. All parties shall disseminate classified documents (those marked "CONFIDENTIAL," "SECRET," or "TOP SECRET") and the information contained therein only to individuals who possess the requisite clearance and an official need to know the information to assist in the preparation of the case.
- b. IT IS FURTHER ORDERED that all classified or sensitive discovery materials, and copies thereof, given to the Defense or shared with any authorized person by the Defense must and shall be returned to the government at the conclusion of this case's review and final decision by the President or, if designated, the Secretary of Defense, and any post-trial U.S. federal litigation that may occur.

7. BOOKS, ARTICLES, OR SPEECHES:

- a. FINALLY, IT IS ORDERED that neither members of the Defense team nor the Prosecution shall divulge, publish or reveal, either by word, conduct, or any other means, any documents or information protected by this Order unless specifically authorized to do so. Prior to publication, members of the Defense team or the Prosecution shall submit any book, article, speech, or other publication derived from, or based upon information gained in the course of representation of the accused in military commission proceedings to the Department of Defense for review. This review is solely to ensure that no information is improperly disclosed that is classified, protected, or otherwise subject to a Protective Order. This restriction will remain binding after the conclusion of any proceedings that may occur against the accused.
- b. The provisions in paragraph 7a apply to information learned in the course of representing the accused before this commission, no matter how that information was obtained. For example, paragraph 7a:

(1) Does not cover press conferences given immediately after a commission hearing answering questions regarding that hearing so long as it only addresses the aspects of the hearing that were open to the public.

(2) Does not cover public discourses of information or experiences in representing the accused before this military commission which is already known and available in the public forum, such as open commission hearings, and motions filed and made available to the public.

(3) Does cover information or knowledge obtained through any means, including experience, that is not in the public forum, and would and could only be known through such an intimate interaction in the commission process (for example, a defense counsel's experience logistically in meeting a client).

8. REQUEST FOR EXCEPTIONS: Either party may file a motion, under seal and in accordance with POM 4-3 or 9-1 as appropriate, for appropriate relief to obtain an exception to this Order should they consider it necessary for a full and fair trial and/or, if necessary, any appeal.

9. BREACH: Any breach of this Protective Order may result in disciplinary action or other sanctions.

IT IS SO ORDERED

R.S. Chester
Colonel, U.S. Marine Corps
Presiding Officer



OFFICE OF THE
CHIEF PROSECUTOR

OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

February 24, 2006

MEMORANDUM FOR MR. [REDACTED]
MAJOR [REDACTED] USA
CAPTAIN [REDACTED] USA
LIEUTENANT [REDACTED] USNR

SUBJECT: Detailed Prosecutors

Consistent with my authority as Chief Prosecutor and the provisions of Sections 4B(2) of Military Commission Order No. 1, dated August 31, 2005, and Section 3B(9) of Military Commission Instruction No. 3, dated July 15, 2005, the above named counsel are detailed and designated in the case of U.S. v. Zahir as follows:

United States v. Zahir

Detailed Prosecutor:

Mr. [REDACTED]

Detailed Assistant Prosecutors:

Major [REDACTED]

Captain [REDACTED]

Lieutenant [REDACTED]

MORRIS D. DAVIS
Colonel, U.S. Air Force
Chief Prosecutor
Office of Military Commissions

cc:
Deputy Chief Prosecutor

UNITED STATES OF AMERICA

v.

ABDUL ZAHIR
a/k/a Abdul Bari

DISCOVERY ORDER (PO 1)

1 March 2006

1. The Presiding Officer finds that to ensure a full and fair trial, the following ORDER is necessary. All correspondence to the Presiding Officer concerning this Discovery Order shall reference the filings designation, PO 2. (See POM 12-1 concerning filings designations.)

2. This Order does not relieve any party of any duty to disclose those matters that Commission Law requires to be disclosed. Where this Order requires disclosure at times earlier or later than Commission Law provides or requires, the Presiding Officer has determined that such earlier or later disclosure is necessary for a full and fair trial.

3. All disclosures required by this Order are continuing in nature.

a. The times set forth below apply to any matter known to exist, or reasonably believed to exist, on the date this Order is issued. If any matter required to be disclosed by this order is not known to exist on the date this Order is issued, but later becomes known, the party with the responsibility to disclose it under this Order will disclose it as soon as practicable, but not later than three duty days from learning that the matter exists.

b. In those cases when any matter required to be disclosed by this Order, becomes known after the date of this Order, but the party is unable to obtain or produce it as required, the party shall give written (email) notice to opposing counsel within three duty days, said notice including a description of the nature of the item or matter and the date and time when it will be produced or disclosed.

c. If a party is unable to complete its discovery obligations within the time provided, it shall complete that discovery that it can and request a delay for only those matters yet to be provided.

4. Any matter that has been provided or disclosed to opposing counsel prior to the entry of this Order need not be provided again if only to comply with this Order.

5. Providing a list of witness names in compliance with this discovery Order does not constitute a witness request. Witness requests must be made in accordance with POM #10-2.

RE 11 (Zahir)
Page 1 of 6

6. Neither the Presiding Officer nor the Assistant shall be provided with a copy of the items ordered to be produced or disclosed by this Order. If counsel believe there has not been adequate compliance with this Order, counsel shall seek relief using the procedures in POM 4-3 or POM 7-1, as appropriate.

7. Objections to the wording of this Order, or the authority to issue this Order. Counsel who object to the requirements of this discovery Order, the Presiding Officer's authority to issue a discovery order, or who seek any relief from the requirements of this Order shall file a motion in accordance with POM 4-3 NLT 3 April 2006.

8. Failure to disclose a matter as required by this Order may result in the imposition of those sanctions which the Presiding Officer determines are necessary to enforce this Order or to otherwise ensure a full and fair trial.

9. If any matter that this Order, or Commission Law, requires to be disclosed was in its original state in a language other than English, and the party making the disclosure has translated it, has arranged for its translation, or is aware that it has been translated into English from its original language, that party shall also disclose a copy of the English translation along with a copy of the original untranslated document, recording, or other media in which the item was created, recorded, or produced.

10. Each of the disclosure requirements of this Order shall be interpreted as a requirement to provide to opposing counsel a duplicate of the original of any matter to be disclosed. Transmittal of a matter to opposing counsel electronically satisfies the disclosure requirements herein and is the preferred method of production. When disclosure of any matter is impracticable or prohibited because of the nature of the item (a physical object, for example), or because it is protected or classified, the disclosing party shall permit the opposing counsel to inspect the item in lieu of providing it.

a. If a matter is in electronic form, it shall be provided in the same electronic form unless reasons – stated and justified when the matter is provided – dictates otherwise such as a proprietary program unavailable to the parties, security reasons, or otherwise.

b. Electronic “searchability” of documents.

(1) Because it is not possible to create a 100% accurate, text-searchable document using Optical Character Recognition (OCR) or other software, no party guarantees a text search in an electronic document will be 100% accurate. While providing documents and other evidence in electronic form is preferred and text-searching is a useful technology, it is not a substitute for reading or viewing the document itself.

(2) Matters shall be considered to have been disclosed pursuant to this Discovery Order when the matters or documents provided are viewable by sight either as displayed on a computer monitor, printed, or in other hard copy form regardless of whether a text search reveals the information.

(3) A party shall not, however, convert a text-searchable or OCR'd document before serving on the opposing party to prevent the opposing party from using text-searching software or tools.

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11. A party has not complied with this Order until that party has disclosed to detailed counsel for the opposing party - or another counsel lawfully designated by the detailed counsel - the matter required to be disclosed or provided.

12. Definitions:

a. "At trial." As used in this order, the term "at trial" means during the proponent party's case in chief (and not rebuttal or redirect), whether on merits or during sentencing. Matters to be disclosed which relate solely to sentencing will be so identified.

b. "Exculpatory evidence" includes any evidence that tends to negate the guilt of the accused, or mitigates any offense with which the accused is charged, or is favorable and material to either guilt or to punishment.

c. "Synopsis of a witness' testimony" is that which the requesting counsel has a good faith basis to believe the witness will say, if called to testify.

(1) A synopsis shall be prepared as though the witness were speaking (first person), and shall be sufficiently detailed as to demonstrate both the testimony's relevance and that the witness has personal knowledge of the matter offered. *See* Enclosure 1, POM 10-2, for some suggestions.

(2) If a statement or report that has been provided to the opposing party contains a complete synopsis of what the witness will testify to, the statement or report is identifiable by bates stamp number or otherwise, and the location of the report or statement is reasonably described, no further synopsis is required provided that the witness list refers to the statement or report as containing the synopsis. If there is a statement or report that contains a portion of the synopsis of the witness' testimony, a party need only identify the statement or report as described above and provide a synopsis of any additional matters about which the witness will testify.

d. "Disclosure" as used in this Order is synonymous with "production."

e. "Matter" includes any matters whatsoever that is required to be produced under the terms of this Order, whether tangible or intangible, including but not limited to, physical objects, documents, audio, video or other recordings in any media, electronic data, studies, reports, or transcripts of testimony, whether from depositions, former commission hearings, or other sworn testimony.

13. Nothing in this Order shall be interpreted to require the disclosure of attorney work product to include notes, memoranda, or similar working papers prepared by counsel or counsel's trial assistants.

14. The Prosecution shall provide to the Defense the items listed below not later 17 March 2006. The items shall be provided to the detailed defense counsel unless the detailed defense counsel designates another lawful recipient of the items. The Prosecution may request a delay in complying with this

order by either filing a motion or special request for relief with the Presiding Officer in accordance with POM 4-3.

a. Evidence and copies of all information the prosecution intends to offer at trial.

b. The names and contact information of all witnesses the prosecution intends to call at trial along with a synopsis of the witness' testimony.

c. As to any expert witness or any expert opinion the prosecution intends to call or offer at trial, a *curriculum vitae* of the witness, copies of reports or examinations prepared or relied upon by the expert relevant to the subject matter to which the witness will testify or offer an opinion, and a synopsis of the opinion that the witness is expected to give.

d. Exculpatory evidence known to the prosecution.

e. Statements of the accused in the possession or control of the Office of the Chief Prosecutor, or known by the Office of the Chief Prosecutor to exist, that:

(1) The prosecution intends to offer at trial whether signed, recorded, written, sworn, unsworn, or oral, and without regard to whom the statement was made.

(2) Are relevant to any offense charged, and were sworn to, written or signed by the accused, whether or not to be offered at trial.

(3) Are relevant to any offense charged, and were made by the accused to a person the accused knew to be a law enforcement officer of the United States, whether or not to be offered at trial.

f. Prior statements of witnesses the prosecution intends to call at trial, in the possession or control of the Office of the Chief Prosecutor, or known by the Office of the Chief Prosecutor to exist, and relevant to the issues about which the witness is to testify that were:

(1) Sworn to, written or signed by, the witness.

(2) Adopted by the witness, provided that the statement the witness adopted was reduced to writing and shown to the witness who then expressly adopted it.

(3) Made by the witness, and no matter the form of the statement, contradicts the expected testimony of that witness.

15. The Defense shall provide to the detailed Prosecution the items listed below not later than 17 April 2006. The items shall be provided to the detailed prosecutor unless the detailed prosecutor designates another lawful recipient of the items. These provisions shall not require the defense to disclose any statement made by the accused, or to provide notice whether the accused shall be called as a witness. The Defense may request a delay in complying with this order by either filing a motion or special request for relief with the Presiding Officer in accordance with POM 4-3.

a. Evidence and copies of all matters the defense intends to offer at trial.

b. The names and contact information of all witnesses the defense intends to call at trial along with a synopsis of the witness' testimony.

c. As to any expert witness or any expert opinion the defense intends to call or offer at trial, a *curriculum vitae* of the witness, copies of reports or examinations prepared or relied upon by the expert relevant to the subject matter to which the witness will testify or offer an opinion, and a synopsis of the opinion that the witness is expected to give.

d. Prior statements of witnesses the defense intends to call at trial, in the possession or control of the defense counsel, or known by the defense counsel to exist, and relevant to the issues about which the witness is to testify that were:

(1) Sworn to, written or signed by, the witness.

(2) Adopted by the witness, provided that the statement the witness adopted was reduced to writing and shown to the witness who then expressly adopted it.

(3) Made by the witness, and no matter the form of the statement, contradicts the expected testimony of that witness.

e. Notice to the Prosecution of any intent to raise an affirmative defense to any charge. An affirmative defense is any defense which provides a defense without negating an essential element of the crime charge including, but not limited to, lack of mental responsibility, diminished capacity, partial lack of mental responsibility, accident, duress, mistake of fact, abandonment or withdrawal with respect to an attempt or conspiracy, entrapment, accident, obedience to orders, and self-defense. Inclusion of a defense above is not an indication that such a defense is recognizable in a Military Commission, and if it is, that it is an affirmative defense to any offense or any element of any offense.

f. In the case of the defense of alibi, the defense shall disclose the place or places at which the defense claims the accused to have been at the time of the alleged offense.

g. Notice to the prosecution of the intent to raise or question whether the accused is competent to stand trial.

16. When Alternatives to Live Testimony Will Be Offered by a Party.

a. The testimony of a witness may be offered by calling the person to appear as a witness before the Commission (live testimony) or by using alternatives to live testimony.

b. Whenever this Order requires a party to disclose the names of witnesses to be called, a party which intends to offer an alternative to live testimony shall provide the notice below to the opposing party:

(1) Intent to use alternatives to live testimony rather than calling the witness.

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(2) The method of presenting the alternative to live testimony the party intends to use. (See paragraph 3c(6)(a-g), POM 10-2, for examples),

(3) The dates, locations, and circumstances - and the persons present - when the alternative was created, and

(4) The reason(s) why the alternative will be sought to be used rather than production of live testimony.

17. Objections to Alternatives to Live Testimony. If, after receiving a notice required by paragraph 16 above, the party receiving the notice wishes to prevent opposing counsel from using the proposed alternative to live testimony, the receiving party shall file a motion under the provisions of POM# 4-3. Such motion shall be filed within 5 days of disclosure of the intent to offer an alternative to live testimony, or the receiving party shall be deemed to have waived any objection to the use of an alternative to live testimony.

18. Obtaining or Creating Alternatives to Live Testimony - Notice and Opportunity to Attend and Participate.

a. Under Commission Law, confrontation of persons offering information to be considered by the Commission is not mandatory, nor is there a requirement for both parties to participate in obtaining or creating alternatives to live testimony. Further, there is no general rule against hearsay.

b. As a result, parties must afford opposing counsel sufficient notice and opportunity to attend witness interviews when such interviews are intended to preserve testimony for actual presentation to the Presiding Officer or other members of the Commission.

c. Failure to provide such notice as is practical may be considered - at the discretion of the Presiding Officer (or in a paragraph 6D(1), MCO# 1 determination, by the other Commission members) - along with other factors, on the issue of admissibility of the proffered testimony.

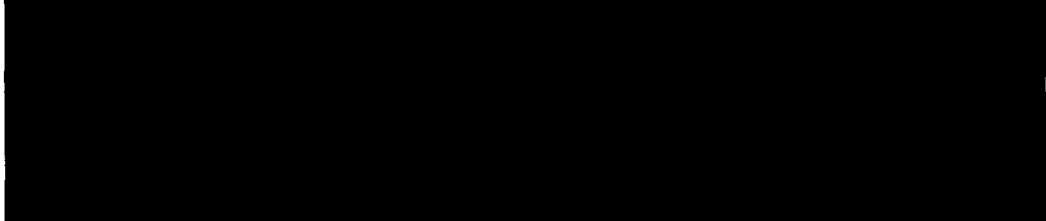
IT IS SO ORDERED:

/s/
R.S. CHESTER
Colonel, U.S.M.C.
Presiding Officer

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Hodges, Keith H. CTR OMC

From:
Sent:
To:



Cc:

Subject: PO 2: US v. Zahir, Trial Order



Significant
Commission Dates.d.



First PO instructions
to Panel...



COL Chester
Logographical Summa.

1. This email is being added to the filings inventory as PO 2. (See POM 12-1 for a description of the Filings Inventory.)

2. I am Keith Hodges, the Assistant to the Presiding Officer in the case in the subject line of this email. My duties are outlined in Presiding Officer Memorandum (POM - which serve as rules of court) 2-2. That POM, and all the others POMs, can be found at:
http://www.defenselink.mil/news/Aug2004/commissions_memoranda.html. This email, and all others that I send that state "BY DIRECTION OF THE PRESIDING OFFICER" are sent at the Presiding Officer's direction. All POMs, to include as later modified or supplemented, are in effect for all Commission cases. See Appointing Authority Regulation 2 dated 26 January 2006.

3. The Presiding Officer intends to hold a session during the 3 April 2006 trial term at Guantanamo. This session will include the following:

- a. Initial session without members (convening of the Commission.)
- b. Accused's election of counsel.
- c. Voir dire of the Presiding Officer (See the attached.)
- d. Discussion - and if necessary - litigation concerning the PO 1 (Discovery Order), its terms and enforceability.
- e. Entry of pleas. (If the accused requests to defer pleas, the Presiding Officer advises he will grant the request.)
- f. Motions. (If the parties request to defer motions - except a motion as to the wording, terms, and enforceability of the discovery order - the Presiding Officer advises he will grant the request. The Presiding Officer may also direct other, specific motions be made or waived.)
- g. Setting a schedule for future sessions and the trial to include: law motions (motions other than on the admissibility or form of evidence); evidentiary motions; voir dire of the other members, and the trial. The dates the Presiding Officer will be looking at are those on the attached "Significant Dates Worksheet."

4. If you request a date earlier or later than the 3 April trial term, advise me and the Presiding Officer NLT 9 March 2006. If you request a delay, your reply must include the reasons for the delay and a calendar showing your activities and commitments - personal and professional - that make it impossible to proceed by the 3 April Trial Term.

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5. If the detailed defense counsel is aware of any other military counsel, or any civilian counsel, who has or may join the Defense team, those counsel are to be identified by name, their association with the case, and the details of why their status with respect to becoming a member of the Defense team. If the detailed defense counsel believes these counsel will make an appearance or be detailed before or at the 3 April trial term and they request a delay, also forward their calendars as outlined in paragraph 4 above.

6. Also attached is an email sent at the direction of the Presiding Officer issuing "first instructions" to the members.

Three attachments:

- 1 - Significant dates worksheet
- 2 - Email on "first instructions" and those instructions
- 3 - Voir dire information on the Presiding Officer

BY DIRECTION OF THE PRESIDING OFFICER

Keith Hodges
Assistant to the Presiding Officers
Military Commission

<<Significant Commission Dates.doc>> <<First PO instructions to Panel 2
dtd 1 Dec 05.pdf>> <<COL Chester Biographical Summary - Voir Dire.pdf>>

Significant Commission Dates
United States v. _____

# ¹	Event	Date	Notes
1.	First session (without members) <ul style="list-style-type: none"> • Convening the Commission • Choice of counsel • Voir dire of PO • Pleas (ordinarily reserved) • Motions (ordinarily reserved) • Discovery Order litigation 		
2.	Provide copies of existing Protective Orders to PO		
3.	Motions as to Discovery Order due ²		POM 4-3
4.	a. Submit Protective Orders for PO signature, or b. Object to protective orders issued sua sponte by the PO.		POM 9-1
5.	Discovery completed – Prosecution ²		
6.	Discovery completed – Defense ²		
7.	Requests for access to evidence		POM 7-1
8.	“Law” Motions: <i>Motion</i> ³		POM 4-3
9.	“Law” Motions: <i>Response</i>		POM 4-3
10.	“Law” Motions: <i>Reply</i>		POM 4-3
11.	Witness requests on law motions		POM 10-2
12.	Evidentiary motions: <i>Motion</i>		POM 4-3
13.	Evidentiary motions: <i>Response</i>		POM 4-3
14.	Evidentiary motions: <i>Reply</i>		POM 4-3
15.	Witness requests on evidentiary motions		POM 10-2
16.	Voir dire of members		
17.	Prosecution case in chief - <i>Merits</i>		Also indicate estimated length of case
18.	Defense case in chief - <i>Merits</i>		Also indicate estimated length of case
19.	Prosecution – <i>Sentencing</i>		Also indicate estimated length of case
20.	Defense - <i>Sentencing</i>		Also indicate estimated length of case
21.	Witness requests – merits and sentencing		POM 10-2
22.	Directed briefs ⁴		
23.	Requests to take conclusive notice		POM 6-2

¹ The requested dates do not have to be in the chronological order that they appear on this list. For example, counsel may request an earlier date for item 7 than they would for item 5.

² These dates should also be indicated in the Discovery Order.

³ A “law motion” is any motions except that to suppress evidence or address another evidentiary matter.

⁴ Dates should be established in the directed brief if directed briefs are used.

**Instructions to Prospective Commission Members
To be provided by APO to each prospective member.**

1 December 2005

This email is being sent to each prospective member by Keith Hodges, Assistant to the Presiding Officers for Military Commissions, at the direction of and on behalf of Colonel Chester.

1. I am Colonel Robert S. Chester. I am the Presiding Officer for Military Commissions to which you have been detailed.
2. You have been detailed as a prospective member to a Military Commission convened to try one or more individuals now being detained at US Naval Station, Guantanamo Bay, Cuba. It is possible you will be detailed to hear a case with a different Presiding Officer in which case you will receive instructions from that officer.
3. Each of you must respond by email to Mr. Hodges, the Assistant to the Presiding Officers, acknowledging receipt of these instructions. I am aware that you received an email from Mr. Hodges earlier, but acknowledge receipt of these instructions as well. Email will be the preferred method to provide you any information. You will not receive any classified emails concerning your service as a member, and you may not send any. Please also tell Mr. Hodges your home mailing address in the event we need to mail you something. (We find that mail to home addresses is quicker and nothing gets x-rayed.)

Your personal-information will NOT be released to anyone else, and will ONLY be used for emergencies.

4. Due to the publicity that these cases may have already received, and recognizing the possibility of further publicity, each of you is instructed as follows:

- a. You may not discuss with anyone, other than as required to inform your military superiors and family of your duty status, your detail to this Commission as a prospective member. You must not listen to, look at, or read any accounts of alleged incidents involving these cases or any accounts of any proceedings in these cases, or any matters concerning the detention of detainees at Guantanamo. Please moderate your web surfing accordingly. You may not consult any source, written or otherwise, as to matters involved in such alleged incidents to include any legal references. You may not discuss these cases with anyone, and if anyone attempts to discuss these cases with you, you must forbid them to do so and report the occurrence to me by emailing the Assistant, Mr. Hodges.

- b. A trial by Military Commission includes the determination of the ability of each member to sit as a member. As a prospective member, you may be questioned in open session by counsel for either side or by myself to determine whether you should serve.

RE 12 (Zahir)
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c. Trial by Military Commission requires members who approach the case with an open mind, and you must keep an open mind until all of the evidence and law has been presented and the Commission closes to deliberate. A Commission member should be as free as humanly possible from any preconceived ideas as to the facts or the law. From the date of receipt of these instructions, you must keep a completely open mind and wait until all of the evidence is presented, you have been instructed on the law to be applied, and the Commission has retired to deliberate before you discuss the facts of this case with anyone, including other Commission members.

5. Administrative matters:

a. If you believe there is a reason you should be excused from serving on the Commission and you request that you be excused, you may make such a request to the Appointing Authority through the Chief Clerk for Military Commissions (Mr. Harvey at email [REDACTED])

b. All sessions of the Commission will be held at Naval Base, Guantanamo Bay, Cuba. It is not known when the first session will be held, and you will be informed as soon as I know. All TDY costs will be born by the Office of Military Commissions. At Guantanamo:

1) You will be given the opportunity to access web based email. To do this, you will obviously have to know the web address for your command's Exchange server, or you must have a free web account such as hotmail, yahoo, or the like.

2) Normal cell phones will NOT work at Guantanamo. However, you will have access to Class A phone service on an as-needed basis.

c. Both Mr. Harvey and Mr. Hodges are authorized to send you administrative information concerning logistics, security clearances, uniforms, lodging, orders, travel and the like. They will not be communicating with you concerning the facts, the law, or any other aspect of any case.

/s/

Robert S. Chester
Colonel, USMC
Presiding Officer

Biographical Summary

Robert S. Chester
Colonel, USMC

Born [REDACTED] Graduated from University of Idaho, Moscow Idaho, with a BS in Accounting 1976.

Commissioned a second lieutenant in May 1976.

After The Basic School, designated a communications officer and attend Basic Communications Officer Course in 1977.

1977- 1979 assigned to Marine Wing Communications Squadron 38, Marine Wing Support Group 38, 3rd Marine Aircraft Wing, El Toro, California. Served as legal officer, CMS Officer, CMCC Officer, and Wire Platoon Commander.

1979 -1982 attended University of Idaho College of Law, on the Funded Law Education Program.

1982 - 1984 assigned to 1st Force Service Support Group, Camp Pendleton, CA where assigned as trial counsel and defense counsel.

1984 - 1986 assigned as Senior Judge Advocate, 11th Marine Amphibious Unit, I Marine Amphibious Force.

1996 - 1988 assigned to 1st FSSG and served as Senior Defense Counsel and Assistant Officer in Charge, Legal Services Support Section.

1988 - 1990 assigned to 2d FSSG, Camp Lejeune, NC and served as trial counsel and Senior Defense Counsel.

1990 - 1992 assigned to 2d Marine Division and served as Deputy Staff Judge Advocate, 2d Marine Division and II Marine Expeditionary Force. Deployed to Saudi Arabia for six months in support of Operations Desert Shield and Desert Storm

1992 - 1995 assigned to Navy-Marine Corps Trial Judiciary, Camp Pendleton, as a military judge.

1995 - 1998 assigned to 1st FSSG as OIC, LSSS.

1998 - 1999 assigned as Senior Legal Advisor, Joint Task Force 6, El Paso, Texas.

1999 - 2000 assigned as SJA, III MEF, Okinawa, Japan.

2000 - 2002 assigned as SJA, I MEF, Camp Pendleton, CA.

2002 - Present assigned as Circuit Military Judge, [REDACTED] Deployed to Iraq for three months in support of Operation Iraqi Freedom.

Admitted to Idaho Bar, 1982 and California Bar, 1985.

Education: BS in Accounting, University of Idaho, 1976.
MA in Human Resources Management, Pepperdine University, 1978.
JD, University of Idaho, 1982.

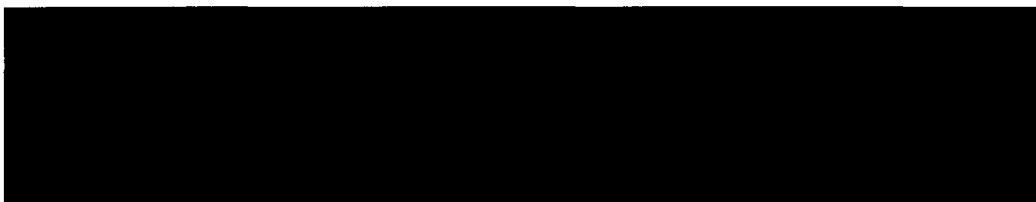
AWARDS: Joint Meritorious Service Medal, Meritorious Service Medal with 3 Gold Stars, Navy Commendation Medal.

PERSONAL: [REDACTED]

RE 12 (Zahir)
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Hodges, Keith

From:
Sent:
To:
Cc:



Subject: RE: U.S. v. Abdul Zahir - Defense Request for Relief vis-a-vis Extension to Trial Order dtd 2 MAR 2006.

The Presiding Officer advises he will:

1. Defer pleas if such is requested.
2. Permit reservation on motions, except for those addressing the discovery order. The parties are welcome, however, to make any motions they can submit.
3. Make every effort to construct a docket for the week of 3 April that will accommodate the parties and the defense translator.

BY DIRECTION OF THE PRESIDING OFFICER

Keith Hodges
Assistant to the Presiding Officers

From: Bogar, Thomas, LTC, DoD OGC
Sent: Wed 3/8/2006 4:13 PM
To:
Cc:



Mr. Hodges -

Pursuant to POM 4-3. para. 13, this transmission shall serve as Defense Request for Special Relief in the form of a Request for Extension to the Trial Order issued 2 MAR 2006.

The Defense will be prepared to proceed on for the 3 APR 2006 session on those matters detailed in you email dated 2 MAR 06, to wit: election of counsel, voir dire of Presiding Officer, discussion and potential argument regarding PO1, setting schedule for future sessions and trial, and motion (if any) regarding the discovery order, with the following exceptions:

1. The Defense respectfully requests permission to defer pleas;
2. The Defense respectfully requests permission to defer motions, except a motion as to the wording, terms,

and enforceability of the discovery order;

3. An extension is requested from items #1 and #2 above, for no other reason than the Government need not produce discovery until 17 MAR 2006, which leaves the undersigned counsel 10 business days to review such documents prior to the 3 APR 2006 Session. As such, the Defense will need more time to analyze such documents, interview witnesses, review the contents of such documents with the Defendant, and the like towards a trial preparation before the undersigned could reasonably consider motion practice without prejudicing my client.

4. AND, the Defense respectfully requests to be docketed during the first part of the Session, preferably either on 3 APR 2006 or on 4 APR 2006. Defense Interpreter, Badi Badiozami, Ph.D., will be available only 3 APR 2006 through 5 APR 2006, and it is our hope he be on the 5 APR 2006 rotator. He is attached for trial as interpreter in a CA proceeding 6 APR 06.

The Defense knows of no civilian counsel, at this point, who may or will join the Defense. The undersigned does know an attorney has filed a Habeus petition in the DC Court. The undersigned reserves the right to supplement this portion of the response.

WHEREFORE, the undersigned detailed military attorney for Abdul Zahir respectfully requests relief in the form of an extension of time by which to: (1) enter a plea on the record; and (2) file and argue law motions, except a motion as to the wording, terms, and enforceability of the discovery order.

V/R

ATTORNEY FOR ABDUL ZAHIR

/s/

THOMAS J. BOGAR

LTC, JA, USAR

Thomas J. Bogar, LTC, JA

Office of Military Commissions

Office of the Chief Defense Counsel

[REDACTED]

Arlington, VA 22202

[REDACTED]

[REDACTED]

[REDACTED]

CONFIDENTIALITY NOTICE. The information contained in this e-mail and any accompanying attachments may constitute confidential, attorney-client information and work product which is legally privileged. This

information is the property of the individual attorney and respective client. If you are not the intended recipient of this information, any disclosure, copying, distribution or the taking of any action in reliance on this information is strictly prohibited. If you received this e-mail in error, please notify us immediately by return e-mail or by calling [REDACTED]

-----Original Message-----

From: [REDACTED]

Sent: [REDACTED]

To: [REDACTED]

Subject: PO 2: US v. Zahir, Trial Order

1. This email is being added to the filings inventory as PO 2. (See POM 12-1 for a description of the Filings Inventory.)

2. I am Keith Hodges, the Assistant to the Presiding Officer in the case in the subject line of this email. My duties are outlined in Presiding Officer Memorandum (POM - which serve as rules of court) 2-2. That POM, and all the others POMs, can be found at:

http://www.defenselink.mil/news/Aug2004/commissions_memoranda.html. This email, and all others that I send that state "BY DIRECTION OF THE PRESIDING OFFICER" are sent at the Presiding Officer's direction. All POMs, to include as later modified or supplemented, are in effect for all Commission cases.

See Appointing Authority Regulation 2 dated 26 January 2006.

3. The Presiding Officer intends to hold a session during the 3 April 2006 trial term at Guantanamo. This session will include the following:

- a. Initial session without members (convening of the Commission.)
- b. Accused's election of counsel.
- c. Voir dire of the Presiding Officer (See the attached.)
- d. Discussion - and if necessary - litigation concerning the PO 1 (Discovery

Order), its terms and enforceability.

e. Entry of pleas. (If the accused requests to defer pleas, the Presiding Officer advises he will grant the request.)

f. Motions. (If the parties request to defer motions - except a motion as to the wording, terms, and enforceability of the discovery order - the Presiding Officer advises he will grant the request. The Presiding Officer may also direct other, specific motions be made or waived.)

g. Setting a schedule for future sessions and the trial to include: law motions (motions other than on the admissibility or form of evidence); evidentiary motions; voir dire of the other members, and the trial. The dates the Presiding Officer will be looking at are those on the attached "Significant Dates Worksheet."

4. If you request a date earlier or later than the 3 April trial term, advise me and the Presiding Officer NLT 9 March 2006. If you request a delay, your reply must include the reasons for the delay and a calendar showing your activities and commitments - personal and professional - that make it impossible to proceed by the 3 April Trial Term.

5. If the detailed defense counsel is aware of any other military counsel, or any civilian counsel, who has or may join the Defense team, those counsel are to be identified by name, their association with the case, and the details of why their status with respect to becoming a member of the Defense team. If the detailed defense counsel believes these counsel will make an appearance or be detailed before or at the 3 April trial term and they request a delay, also forward their calendars as outlined in paragraph 4 above.

6. Also attached is an email sent at the direction of the Presiding Officer

issuing "first instructions" to the members.

Three attachments:

- 1 - Significant dates worksheet
- 2 - Email on "first instructions" and those instructions
- 3 - Voir dire information on the Presiding Officer

BY DIRECTION OF THE PRESIDING OFFICER

Keith Hodges

Assistant to the Presiding Officers

Military Commission

[REDACTED]

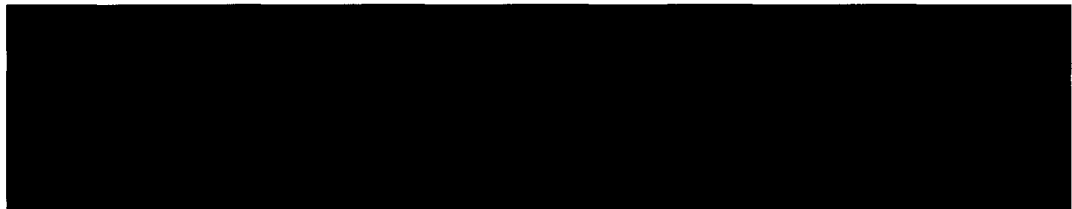
Voice [REDACTED]

Fax: [REDACTED]

<<Significant Commission Dates.doc>> <<First PO instructions to Panel 2
dtd 1 Dec 05.pdf>> <<COL Chester Biographical Summary - Voir Dire.pdf>>

Hodges, Keith

From:
Sent:
To:
Cc:



Subject: RE: U.S. v. Abdul Zahir - Defense Request to incorporate and include as an RE Col. Chester's Answers to voir dire from U.S. v. Khadr.

1. The Presiding Officer grants the Defense request to incorporate RE 29 in US v Khadr, as it applies to US v Zahir, into the case of US v Zahir. This will be accomplished by the Assistant's including this email, and RE 29 from Khadr, as an RE in US v. Zahir.

2. The Presiding Officer grants the Defense request to include the on-the-record voir dire of the Presiding Officer in US v Khadr, as it applies to US v Zahir, into the case of US v Zahir. The Defense is requested to coordinate with Mr. Harvey and have him make an Adobe document of the pertinent pages the Defense wishes after a final session transcript has been signed, and then for the Defense to send that document to the Assistant who shall prepare it as an RE in US v. Zahir.

3. The Presiding Officer directs that any written voir dire for him be provided to him and the Assistant, in Word format, NLT 16 March 2006.

BY DIRECTION OF THE PRESIDING OFFICER

Keith Hodges
Assistant

From: Bogar, Thomas, LTC, DoD OGC [mailto:]
Sent: Thu 3/9/2006 3:09 PM
To: 'Hodges, Keith'; Bogar, Thomas, LTC, DoD OGC
Cc: [redacted]

Subject: U.S. v. Abdul Zahir - Defense Request to incorporate and include as an RE Col. Chester's Answers to voir dire from U.S. v. Khadr

Mr. Hodges -

1. This transmission shall acknowledge receipt of yours dated 8 MAR 06.
2. In preparation for the APR 2006 Term, and voir dire of Col. Chester, the Defense respectfully requests a date certain by which to submit written voir dire in the form of interrogatories addressed to Col. Chester, the detailed Presiding Officer.
3. The undersigned has a copy of RE29 for the case of U.S. v. Khadr in addition to a copy of the verbatim transcript to the JAN 2006 Term for said case.

4. The undersigned counsel does not intend to ask the same questions of Col. Chester during the APR 2006 Term. As such, the Defense respectfully requests that Col. Chester's substantive answers (as they may apply to U.S. v. Abdul Zahir and found at RE29 to the case of U.S. v. Khadr) are included and incorporated by reference as the next applicable RE for U.S. v. Abdul Zahir.

5. Similarly, Defense respectfully requests that Col. Chester's substantive answers (as they may apply to U.S. v. Abdul Zahir and found at the verbatim transcript, pp 59-74 to the case of U.S. v. Khadr) be included and incorporated by reference as an RE for U.S. v. Abdul Zahir.

6. WHEREFORE, the undersigned detailed counsel for Abdul Zahir respectfully requests the following: (1) provide a date certain by which to submit written voir dire in the form of interrogatories to Col. Chester; (2) incorporate RE29 for U.S. v. Khadr as an RE for the case at bar; (3) incorporate Col. Chester's substantive answers (as they may apply to U.S. v. Abdul Zahir as found at the verbatim transcript, pp 59-74 to the case of U.S. v. Khadr) as an RE for the case at bar; and (4) that this transmission be made part of the record for U.S. v. Abdul Zahir.

V/R

ATTORNEY FOR ABDUL ZAHIR

/s/

THOMAS J. BOGAR

LTC, JA, USAR

Thomas J. Bogar, LTC, JA

Office of Military Commissions

Office of the Chief Defense Counsel

[REDACTED]
Arlington, VA 22202
[REDACTED]
[REDACTED]
[REDACTED]

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Hodges, Keith

From: Hodges, Keith [REDACTED]
Sent: Friday, December 30, 2005 10:46 AM
To: [REDACTED]
[REDACTED]
[REDACTED]

Subject: PO 3 - Voir Dire Questionnaire for the Presiding Officer, US v. Khadr
Attachments: PO 3 - Khadr - Voir Dire questionnaire for the PO.pdf

Find attached CPT Merriam's voir dire questionnaire for the Presiding Officer along with the Presiding Officer's answers.

FOR THE PRESIDING OFFICER

Keith Hodges
Assistant to the Presiding Officers
Military Commission
[REDACTED]
[REDACTED]
[REDACTED]

From: Merriam, John J CPT (PKI) [REDACTED]
Sent: Tuesday, December 27, 2005 11:03 AM
To: [REDACTED]
[REDACTED]
[REDACTED]

Subject: Voir Dire Questionnaire for the Presiding Officer, US v. Khadr

Sir:

Pursuant to your email of 9 December (below), please find attached a questionnaire prepared by the defense in advance of voir dire of the Presiding Officer in US v. Khadr.

v/r,

J.J. Merriam
CPT, JA
Trial Defense Attorney
Fort Lewis, Washington

RE 14 (Zahir)
Page 3 of 11

12/30/2005

UNITED STATES OF AMERICA

v.

OMAR AHMED KHADR

PO 3

**Presiding Officer's Answers to
Voir Dire Questionnaire Submitted to the
Presiding Officer**

December 30, 2005

The below document was submitted to the Presiding Officer by the detailed defense counsel. The Presiding Officer has inserted his reply in ALL CAPITAL LETTERS. This document will be added to the filings inventory as PO 3.

/s/

R.S. CHESTER
Colonel, U.S.M.C.
Presiding Officer

UNITED STATES OF AMERICA

v.

OMAR AHMED KHADR

**Voir Dire Questionnaire Submitted to the
Presiding Officer**

27 December 2005

1. In response to the email dated 9 December 2005 by Mr. Keith Hodges, Assistant to the Presiding Officer, the Defense in the above-styled case respectfully submits the following questions to the Presiding Officer. The purpose of this questionnaire is to increase the efficiency and effectiveness of oral voir dire of the Presiding Officer by counsel.
2. The questions that follow are broken into several sub-sets based on general subject matter. In all cases, the more detailed the response, the better counsel will be able to determine what issues should be explored during oral voir dire. The defense appreciates the opportunity to submit these questions to the Presiding Officer.

A. Knowledge of Accused, Counsel, or Facts of the Case

1) Do you know the accused in the case currently before the Commission over which you preside? NO.

2) Do you know any person named in any of the charges referred against the accused in this case? This includes any alleged victim, co-accused, alleged co-conspirator, or any other person named in the charge sheet. NO.

3) Do you know any person named as a potential witness in any documents currently before the Commission over which you preside? I AM UNAWARE OF THE NAMES OF ANY WITNESSES.

4) Do you personally know the detailed military defense counsel, the civilian defense counsel, any civilian counsel who has represented the accused in other judicial proceedings, or any of the prosecuting attorneys detailed to this case? I MAY KNOW ONE OF THE PROSECUTING ATTORNEYS. NOT SURE. I RAN INTO A MARINE MAJOR, DON'T RECALL HIS NAME, WHEN I WAS VISITING THE OMC DURING THE WEEK OF 12 DECEMBER 2005. Do you personally know either the Chief Prosecutor or the Chief Defense Counsel? I MAY KNOW THE CHIEF DEFENSE COUNSEL. NOT SURE. HE IS A MARINE AND IT IS A SMALL COMMUNITY. For any "yes" answer, please detail the nature and extent of your relationship.

5) Have you had, made, received, or participated in any *ex parte* dealings or communications with government counsel about law, facts, parties, representation, or procedure in this case? NO. I MET THE DEPUTY CHIEF PROSECUTING ATTORNEY DURING MY VISIT TO OMC DURING THE WEEK OF 12 DECEMBER 2005. WE DID NOT DISCUSS THE FACTS OR LAW INVOLVED IN THIS CASE. DISCUSSION WAS BY WAY OF INTRODUCTION. HE WAS A MILITARY JUDGE PRIOR TO HIS RETIREMENT AND WE WOULD HAVE SEEN EACH OTHER AT THE ISMJ CONFERENCE HELD ANNUALLY IN ALABAMA. Have you had any *ex parte* dealings or communication with either civilian or military defense counsel about law, facts, parties, representation, or procedure in this case? NO. I LISTENED TO A SPEAKER PHONE CONVERSATION BETWEEN MR. HODGES AND THE CHIEF DEFENSE COUNSEL (WHO WAS IN CUBA) CONCERNING THE NEED FOR ALL COUNSEL REPRESENTING THE ACCUSED TO BE PRESENT AT ALL PROCEEDINGS. I DON'T RECALL THAT THE CIVILIAN OR MILITARY COUNSEL TALKED ON THE PHONE. THIS OCCURRED DURING MY DECEMBER VISIT TO OMC. This includes communication with the Chief Prosecutor, Deputy Chief Prosecutor, or the Chief Defense Counsel. If so, please

detail the substance and general nature, the approximate time, date, and location of those dealings or communications.

6) Do you have any prior knowledge of the facts of this case, or of the alleged acts of the accused in this case? NO. If so, please detail the nature and extent of that knowledge.

7) Has any prior knowledge of the facts of this case, to include general knowledge about the 9-11 attacks and the "war on terrorism" prejudiced you or in any way made it difficult for you to fairly and impartially rule on matters of law or fact in this case? NO.

B. Direct or Indirect Impact of Terrorism and Combat Operations on the Presiding Officer, Friends or Family of the Presiding Officer, or Professional Colleagues of the Presiding Officer

1) Have you had any experiences, either personal or military, that would impact your ability to remain impartial and to fairly decide the issues presented in this case? NO.

2) Do you personally know any person who has been killed or injured as a result of a terrorist attack of any kind? YES. I KNOW SOME MARINES AND CIVILIAN EMPLOYEES THAT WERE INJURED IN THE PENTAGON. THEY WORKED IN THE COUNSEL TO THE COMMANDANT'S OFFICE AND STAFF JUDGE ADVOCATE TO CMC. I DO NOT RECALL THE NAMES OTHER THAN MR. PETER MURPHY. NONE OF THEM WERE SERIOUSLY INJURED. I AM NOT SURE MR. [REDACTED] WAS INJURED. This includes, but is not limited to, the bombing of the USMC barracks in Beirut, Lebanon I KNOW A COUPLE OF MARINES PRESENT AT BEIRUT. DON'T RECALL THEIR NAMES, BUT THEY HAVE SINCE RETIRED FROM THE MARINE CORPS. ; the bombing of the Khobar Towers in Saudi Arabia NONE. ; the bombing of the USS COLE NONE. ; the attacks on 11 SEP 2001 against the World Trade Center or the Pentagon; or any other attack fairly characterized as an act of "terrorism" or conducted by a party who was not part of the regular armed forces of a nation-state. I KNOW TWO MARINE JAS INJURED IN IRAQ DURING OIF II. ONLY KNOW THEM IN PASSING AND DON'T RECALL THEIR NAMES.

3) Do you personally know any person who has been killed or injured as a result of combat in Afghanistan, Iraq, Somalia, Kosovo, or in any other theater of operations since 1990? YES. IRAQ AND SOMALIA. This includes, but is not limited to, the conflicts in the Persian Gulf, Somalia, Kosovo, Afghanistan, Iraq, the Horn of Africa, or in any other theater of operations in which US or allied forces participated in hostilities.

4) Have you personally participated in combat operations or hostilities of any kind during the course of your military career? NOT SURE WHAT YOU ARE ASKING. YOU WILL NEED TO CLARIFY. If so, please describe which conflict you were involved in and summarize that participation. Please include "indirect participation," such as conducting rehearsals, planning sessions, or writing operations orders or other documents in support of a combat operation, even if you did not personally deploy in support of that operation. I WROTE PART OF 2D MARINE DIVISION OPORDER FOR OPERATION DESERT STORM. I ALSO WROTE SEVERAL ORDERS AND INSTRUCTIONS FOR THE DEPLOYMENT AND DEPLOYED TO SAUDI ARABIA FOR APPROXIMATELY 6 MONTHS. I PARTICIPATED IN THE INITIAL PLANNING FOR OIF AS THE I MEF SJA. I LEFT THE STAFF PRIOR TO THE FINAL PLANNING. I DEPLOYED IN SUPPORT OF OIF II AND SPENT 2-3 MONTHS IN IRAQ. I SPENT TIME IN SEVERAL IRAQI CITIES TRYING COURTS-MARTIAL.

5) At any time during which you served as the primary legal advisor to a combat commander at any echelon, did that combat command or unit, or any part thereof, deploy to combat operations at home or abroad? YES. 2D MAR DIV.

6) Do you know any person who is deployed, or has deployed, to combat in Iraq or Afghanistan? Does this knowledge or relationship prejudice you in any way that might affect your ability to fairly and impartially try matters of fact or law in this case? I KNOW MANY PEOPLE DEPLOYED TO IRAQ, AND IT DOES NOT.

C. Subject-Matter Expertise and Professional Background

1) Do you have any specialized training or education in the field of international law? I HAD A WEEK LONG COURSE IN THE LAW OF ARMED CONFLICT FOLLOWING THE BASIC COURSE AT NJS IN 1982. I HAVE ATTENDED SEVERAL CONFERENCES ADDRESSING LEGAL ASPECTS OF MILITARY OPERATIONS ON THE INTERNATIONAL LEVEL. THESE WERE PRIMARILY SPONSORED BY PACOM. This includes any military or civilian coursework, in law school or in any service school. Please describe this training or education, including, to the extent possible the dates, any significant casebooks or textual references used, and the professor or instructor who taught the class or provided the training.

2) Have you ever provided legal advice on matters of international law, the law of war, military tribunals or commissions, international tribunals convened to try war crimes, crimes against humanity, crimes against

peace, or genocide? YES. To whom and in what capacity? VARIOUS COMMANDERS AND THEIR STAFF TO INCLUDE CG, 2D MAR DIV, II MEF, III MEF, I MEF AND SEVERAL OFFICERS IN THE ROYAL THAI MILITARY. ADVICE PERTAINED TO LAW OF WAR AND SOME INTERNATIONAL LAW AS IT PERTAINED TO US MILITARY AND HOST NATIONS RELATIONSHIPS.

3) Have you ever tried a case, as either a military judge, a trial counsel, or a defense counsel, in which issues of international law or the law of war were decided? YES. I TRIED TWO CASES IN PARTICULAR AS THE MJ WHICH ADDRESSED THE APPLICABILITY OF GENEVA CONVENTIONS TO THE US MILITARY. THE ACCUSED WERE CHARGED WITH ABUSING IRAQI DETAINEES.

4) Do you have any specialized training or education in juvenile law or juvenile justice systems? NO.

5) Have you ever tried a case, as either a military judge, a trial counsel, or a defense counsel, or in a civilian capacity of any kind, in which the accused was a legal minor? NOT THAT I RECALL.

6) Have you received any specialized training of any kind on Al Queda, international terrorism, the "war on terrorism," Operation Enduring Freedom, Operation Iraqi Freedom, the Taliban, Islamic fundamentalism, or detainee operations? WHILE ON THE I MEF STAFF, I RECEIVED REGULAR INTELLIGENCE BRIEFINGS ON THE WAR ON TERROR.

7) Have you ever written an article or spoken in public regarding Al Queda, international terrorism, the Global War on Terror, Operation Enduring Freedom, Operation Iraqi Freedom, the Taliban, Islamic fundamentalism, or detainee operations? NO.

8) Have you ever given a formal opinion regarding the status of any combatant under international law in any conflict? NO. Have you ever served on or advised an "Article 5 Tribunal" or "Combatant Status Review Board?" NO.

D. Relationship with Other Personnel Involved in the Military Commissions

1) Do you know, in either a personal or professional capacity, the Appointing Authority for the Military Commissions? YES. I MET HIM DURING MY 12 DECEMBER VISIT TO OMC. Please describe the nature and extent of any relationship with John D. Altenburg, Jr. that

existed prior to your selection as a candidate for, or your appointment as, a Presiding Officer. WE MET AND INTRODUCED OURSELVES.

2) Have you ever discussed the facts of this case or any other Military Commissions case with the Appointing Authority in any way? NO.

3) Have you ever discussed with the Appointing Authority any ruling or decision made in this case or any other Military Commissions case? NO.

4) Do you know, in either a personal or professional capacity, the General Counsel for the Department of Defense? NO. Please describe the nature and extent of any relationship with the General Counsel that existed prior to your selection as a candidate for, or your appointment as, a Presiding Officer.

5) Have you ever discussed the facts of this case or any other Military Commissions case with the General Counsel in any way? NO.

6) Do you know, in either a personal or professional capacity, the Assistant to the Presiding Officer, Mr. Keith Hodges? YES. Please describe the nature and extent of any relationship with Mr. Keith Hodges that existed prior to your selection as a candidate for, or your appointment as, a Presiding Officer. I NEVER MET HIM PRIOR TO MY SELECTION. I MAY HAVE MET HIM OR SAW HIM AT THE ISMJ CONFERENCE.

7). What duties does Mr. Keith Hodges perform for you in this case? SEE POM 2-2. What duties does he perform for any other member of the Commissions process, including the Appointing Authority? SEE POM 2-2. Are you aware of any communications between Mr. Hodges and the Appointing Authority? NONE OTHER THAN PLEASANTRIES.

8) Do you know, in either a personal or professional capacity, any other officer who has been appointed to serve as a Presiding Officer in a Military Commissions case? YES. Please describe the nature and extent of any relationship with Col. (Ret.) Brownback that existed prior to your selection as a candidate for, or your appointment as, a Presiding Officer. I HAD HEARD OF HIM, BUT DON'T BELIEVE WE HAD EVER MET UNTIL I SAW HIM IN WASHINGTON IN DECEMBER 2005.

9) Have you ever discussed the facts of this case or any other Military Commissions case with any other Presiding Officer or candidate for a position as a Presiding Officer? ANY SUCH CONVERSATIONS ARE PRIVILEGED.

10) Do you know, in either a personal or professional capacity, any other officer who has been appointed to serve as a Member, other than a Presiding Officer, in a Military Commissions case? **NOT THAT I KNOW OF.** Please describe the nature and extent of any relationship with any Member of either this case or another Military Commissions case that existed prior to your selection as a candidate for, or your appointment as, a Presiding Officer.

11) Have you ever discussed the facts of this case or any other Military Commissions case with any Member of any Military Commission? **NO.** Have you ever had any communications of any kind with any Member of any Military Commission? **YES. I DIRECTED PRELIMINARY INSTRUCTIONS SENT TO THEM. THESE WERE PROVIDED TO ALL COUNSEL.** Did you have any role in selecting the members of the Military Commission? **NO.**

12) How did you come to be selected as a Presiding Officer over a Military Commission? **I DON'T KNOW.** Did you volunteer for this duty? **YES.** If so, why? **IT IS IMPORTANT.** If not, do you know why you were selected and by whom?

13) Do you consider past decisions by the Appointing Authority on this case or other Military Commissions cases to be binding on you? **YOU NEED TO CLARIFY THIS QUESTION.** Is it possible for you to rule in a way contrary to the way the Appointing Authority has ruled, decided, or acted in this case? **YOU NEED TO CLARIFY YOUR QUESTION.**

E. Military Commissions Law and Procedure, Legal Presumption of Innocence

1) Have you pre-judged the guilt or innocence of the accused, in any way, on any element of any offense with which he is charged? **NO.** Do you accept that the accused is presumed innocent until proven guilty, and that the government bears the burden of proof beyond a reasonable doubt? **YES.**

2) Can you keep an open mind and remain impartial on all matters of law, fact, or procedure in this case? **YES.**

3) Do you accept that, in order for the accused to be found guilty of any charge, the government must prove each and every element of the charged offense beyond a reasonable doubt? **YES.**

4) Do you consider rulings or decisions made in other military commissions cases, either those already under way or those that will be conducted during the same timeframe as this one, to be binding or to hold

precedential value in the case currently before you? In other words, if another Presiding Officer were to rule on a discrete issue and that same issue arose in the case at bar, do you consider the prior ruling to have any effect on how you should rule? I MIGHT CONSIDER IT, BUT DON'T CONSIDER MYSELF IN ANYWAY BOUND BY A RULING BY A PRESIDING OFFICER IN ANY OTHER CASE.

5) Do you have an opinion regarding the legality of Military Commissions generally? Do you have an opinion regarding the legality of the Military Commissions as currently constituted? What are those opinions, if any? ANY QUESTIONS OF LAW SHOULD BE MADE THE SUBJECT OF A MOTION PER POM 4-3.

6). To whom, and in what manner, do you believe challenges to the legality or the structure of the Military Commissions, to the Military Commission Orders, to the Military Commission Instructions, and to the Appointing Authority Regulations should be made, respectively? ANY LEGAL CHALLENGES SHOULD BE MADE THE SUBJECT OF A MOTION PER POM 4-3. Do you consider those matters to be within the purview of the Presiding Officer and Members of the Commission itself to rule upon? I WOULD HAVE TO SEE THE MOTION.

F. Personal

1) What religious denomination are you? METHODIST. Do you hold religious beliefs that cause, engender, or require as a matter of doctrine or theology, hostility towards or distrust of Islam? NO.

2) Are you a member of, or affiliated with, any political party? NO.

3) Are you aware of any matter, whether or not addressed by the questions posed in this questionnaire, which may cause a reasonable person to believe that you cannot act in a fair and impartial manner in these proceedings? NO.

//original signed//
JOHN J. MERRIAM
CPT, JA
Detailed Defense Counsel

March 13, 2006

1. I, am M. Harvey, Chief Clerk of Military Commissions and the custodian of the authenticated transcript in *United States v. Khadr*, No. 050008.
2. I certify that R. 59-74 (a total of 16 pages of transcript) (attached) are an accurate copy of the authenticated transcript in said case from a portion of the session held on Guantanamo Bay, Cuba on January 11, 2006.

//Signed//

M. Harvey
Chief Clerk
of Military Commissions

1 marked as RE 18 and 29.

2
3 In addition, as I mentioned before, I do know
4 Lieutenant Colonel Vokey professionally and I
5 think he is a highly qualified and competent
6 both officer and attorney. Lieutenant?

7
8 **APROS:** Thank you, sir. In regards to the 30
9 December 2005 questions that you answered from
10 the defense, you had indicated that you had no
11 prior --

12
13 **Presiding Officer:** Give me just a minute to bring that
14 up.

15
16 **APROS:** Yes, sir.

17
18 **Presiding Officer:** All right. I have it in front of me.
19 What specific question are you referring to?

20
21 **APROS:** Sir, on Page 3 of that document, question six.

22
23 **Presiding Officer:** Yes.

1 **PROS:** You indicate that you had no prior knowledge of
2 the facts of this case.

3
4 **Presiding Officer:** That's correct.

5
6 **PROS:** Since that time to now, sir, do you have any
7 knowledge of the facts of this case?

8
9 **Presiding Officer:** No.

10
11 **APROS:** Outside --

12
13 **Presiding Officer:** I've seen the charge sheet. That's
14 all I've seen.

15
16 **APROS:** Correct, sir. Outside of what has already been
17 filed in this case?

18
19 **Presiding Officer:** No.

20
21 **APROS:** Sir, have you in any way read or been exposed to
22 any type of media reports; TV documentaries,
23 press conferences or press reports regarding the
24 accused's family?

1
2 **Presiding Officer:** I think I've seen something that said
3 his father was killed, I believe in Pakistan.
4 And he has a -- his father immigrated and I
5 don't recall from where to Canada, where he was
6 either born or raised with several brothers and
7 sisters. Again, I don't recall the number. And
8 at some point they moved from Canada, and I
9 don't recall if it was Afghanistan or Pakistan.
10 I want to say Pakistan, and it seemed like they
11 moved back to Canada and then back to
12 Afghanistan or Pakistan. They moved back and
13 forth between Afghanistan and Pakistan.
14

15 **APROS:** Sir, will that prior knowledge of those facts in
16 any way impact on your ability to be impartial
17 to this accused and to ensure that he receives a
18 full and fair trial at all times?
19

20 **Presiding Officer:** No.
21

22 **APROS:** Will that in any way play an impact in any
23 factual decision you may have to make predicate
24 to a legal motion in this case?

1
2 **Presiding Officer:** No.

3
4 **APROS:** Sir, have you read or been made aware of any
5 type --
6

7 **Presiding Officer:** Wait. Let me back up for a minute.

8 When I say his father was killed in -- and,
9 again, I think it was Pakistan, the articles
10 that I had seen also indicated he was somehow
11 associated or friends with Osama bin Laden, was
12 involved in al Qaida. But I don't know the
13 specifics of it.
14

15 **APROS:** Again, sir, would that have any impact?
16

17 **Presiding Officer:** It does not impact me at all. I
18 intend to decide the issues that are presented
19 here in court based on the evidence presented
20 and the law as I understand it.
21

22 **APROS:** Just to carry on with that, sir, with the news
23 reports, press articles or any of the same, have
24 you learned any knowledge about the al Qaida

1 terrorist organization?

2
3 **Presiding Officer:** Well, sure. I think I indicated in
4 my -- I don't recall if it was the biography or
5 the questionnaire that at one point I served as
6 the Staff Judge Advocate for I Marine
7 Expeditionary Force. And during the time we
8 received briefings on what was going on,
9 intelligence briefings. And I recall nothing
10 specific about those, and I wouldn't reveal it
11 here in court anyway because it may be
12 classified. I'm not sufficient.

13
14 **APROS:** No, I understand, sir.

15
16 **Presiding Officer:** But there's nothing about that that I
17 recall specifically and certainly nothing that I
18 can think of that would impact me here.

19
20 **APROS:** Sir, if throughout this trial you somehow do
21 recall, for whatever reason, something you have
22 heard in these briefings or from a press report,
23 and you feel it may impact your ability to be
24 impartial or it may impact your ability to

1 ensure the accused receives a full and fair
2 trial, how will you handle that?

3
4 **Presiding Officer:** I would inform counsel, allow them
5 the opportunity to inquire and exercise a
6 challenge, if they determined it was
7 appropriate. If I felt it was somehow
8 disqualifying, I would disqualify myself and
9 recuse myself and ask that a new Presiding
10 Officer be detailed. Let me also say that when
11 I say, "intelligence briefings" as best I recall
12 they were things that dealt with the historical
13 background of Afghanistan and Pakistan, the
14 tribes and the relationships and some of the
15 cultural type things. I don't recall anything
16 specifically on any particular organization or
17 individual.

18
19 **APROS:** But it is safe to say, sir, that counsel can
20 trust that if you believe an issue comes up you
21 will address it.

22
23 **Presiding Officer:** Certainly. That's my responsibility
24 and my oath.

1
2 **APROS:** Yes, sir. Sir, in your questionnaire you had
3 mentioned that you had occasion to try cases
4 that dealt with the Geneva Conventions or
5 possibly international law that you've had some
6 sort of dealings with the law of armed conflict.

7
8 **Presiding Officer:** Correct.

9
10 **APROS:** Obviously, during that time, sir, you've
11 probably looked at treatises, maybe law review
12 articles, certain types of legal authority. If
13 I may, will that prohibit you from coming to any
14 legal motion filed by either party with an open
15 mind?

16
17 **Presiding Officer:** No. The cases that I tried, there
18 were two of them as I recall, and they dealt
19 with abuse of Iraqi detainees by Americans,
20 actually Marines -- actually they dealt with the
21 Geneva Conventions. And the issue turned on
22 whether or not there was a duty by U.S. Marines
23 to protect individuals who came into their care,
24 whether they be POWs or detainees or however you

1 want to characterize them. And it was litigated
2 and I ruled. The cases were tried. I believe
3 both individuals were -- they were convicted of
4 some of the charges, acquitted of not all of the
5 charges. They were involved in OIF-I, Operation
6 Iraqi Freedom One. I think the Convening
7 Authority has still not acted on those cases.
8 It was -- I intend to decide the issues
9 presented here in this Commission based on the
10 law as I understand it.

11
12 Commission law, the term we've used to try to
13 capture things such as the Presiding Officer
14 Memorandums, the President's Order, Military
15 Commission Orders. When deciding an issue, I
16 think it's appropriate to read counsel's briefs
17 and I depend heavily on counsel to educate me as
18 to what they believe the law is. And then I
19 intend to do my own research and make my ruling.
20 And when I make such a ruling, I will inform
21 counsel of the law that I am following. And if
22 counsel think it appropriate or desire that I
23 provide additional indication of what law I've
24 applied, I can certainly allow them to ask for

1 that.

2
3 **APROS:** Sir, for your duties here as Presiding Officer,
4 does anybody write a fitness report or any kind
5 of evaluation on you?

6
7 **Presiding Officer:** No.

8
9 **APROS:** As a follow on, is there any type of evaluation
10 that's going to be made of you for purposes of a
11 promotion board, sir?

12
13 **Presiding Officer:** No. I was due to retire, and I
14 explained this to counsel. I was due to retire.
15 It was actually effective 1 April, but I was
16 going to go on terminal leave, until I was
17 detailed to this Commission. I'm at my career
18 maximum. I'm not going to be promoted. I'm not
19 looking to be promoted. I am a Colonel of
20 Marines and I will retire a Colonel of Marines.

21
22 **APROS:** Sir, from the time of your consideration for
23 being a Presiding Officer.

1 **Presiding Officer:** What does that mean?

2
3 **APROS:** When you were first notified that you were being
4 considered for the position of Presiding
5 Officer.

6
7 **Presiding Officer:** No. I was never notified I was being
8 considered for the position. I was asked. And
9 I don't recall when the first time, whether I
10 was interested in it because the Marine Corps,
11 and I think all of the services were tasked to
12 provide five nominees to be Presiding Officers.
13 We were tasked to provide a data sheet which was
14 brief beyond description. I think I still have
15 a copy of the second one. I don't know if I
16 have a copy of the first one, a data sheet to
17 Headquarters Marine Corps, which I think was
18 then forwarded up to OMC. I'm speculating on
19 that. I believe it was.

20
21 At some point they were -- the services I
22 believe were asked to renew or validate those
23 nominations and I was asked to update or
24 validate that my data sheet was current or

1 correct, which I did, just before submitting.
2 And I think it was after *Hamden* was decided by
3 the Circuit Court of Appeals.
4

5 I asked the Deputy Staff Judge Advocate to the
6 Commandant of the Marine Corps whether or not
7 there was a possibility I would be selected for
8 this. I was told, probably not, simply because,
9 I think, he didn't think it was going -- he
10 wasn't sure that anything was going to happen at
11 any time in the near future. And I don't know
12 that he was speaking from a position of
13 particular information, but I asked him if there
14 was a possibility. Based on that, I submitted
15 my retirement letter. I asked to go ahead and
16 retire effective 1 April. And then the next
17 thing I heard on it was I received a call from
18 Mr. [REDACTED] I believe he's the Chief of Staff
19 for the Commissions, indicating I had been
20 selected. But I don't think Mr. Altenberg had
21 signed the paperwork or signed the letter
22 appointing me, detailing me. And we discussed
23 the issue of my pending retirement. He
24 discussed that with Mr. Altenberg and indicated

1 if I was willing to continue on active duty even
2 past my retirement date that that would not be a
3 problem. And then I received -- later I
4 received a letter in the mail. But there wasn't
5 a period where I was told I'm being considered
6 for this. It was just a phone call saying that
7 I had been selected.

8
9 **APROS:** Well, sir, from the phone call, from that time,
10 sir, has anyone ever come up to you in any way
11 and discussed a certain outcome is desired in
12 this Commission?

13
14 **Presiding Officer:** I'm not sure what you mean by outcome
15 desired. Nobody has ever told me that they're
16 looking -- first of all, I've never discussed
17 *U.S. versus Khadr* with anybody. The facts -- I
18 don't know any of the facts of *U.S. versus*
19 *Khadr*. I don't know what that evidence is. I
20 don't know what the witnesses are and nobody has
21 hinted, indicated, tapped the floor or anything
22 else that they want a certain result. Were they
23 to do something like that, depending on who they
24 were, and when I say that, who I'd report it to,

1 I would probably put them on report.

2
3 The only guidance I have, if you will, is what
4 the President said. He wants a full and fair
5 trial. And that is what I intend to see, is a
6 full and fair trial. And I have no desire, I
7 don't want, wouldn't like, or anything else to
8 see a particular outcome other than that--
9 whether Mr. Khadr is convicted of anything or
10 not will be up to the Commission. What I want
11 to see when I walk out of here is that he has
12 gotten that full and fair hearing and that
13 people realize he received that full and fair
14 hearing, to include Mr. Khadr.

15
16 **APROS:** Sir, would it be appropriate to say that you
17 personally as you sit there today as our
18 Presiding Officer, that you feel completely free
19 and independent to ensure that the accused
20 receives a fair, full and fair and impartial
21 trial?

22
23 **Presiding Officer:** Yes.

1 **APROS:** Two final questions, sir.

2
3 Is there anything in your background, whether it
4 be personal or professional, that you feel could
5 impact on your ability to give this, the
6 accused, a full and fair trial and to be
7 impartial?

8
9 **Presiding Officer:** No.

10
11 **APROS:** Last question, sir.

12
13 Should anything come up that would in any way
14 prohibit you, prevent you, or unlawfully
15 influence you in being fair, full and fair trial
16 and being impartial, how will you handle that?

17
18 **Presiding Officer:** Ask your question again.

19
20 **APROS:** Yes, sir. I'm sorry it did come out a little
21 convoluted.

22
23 Should anything come up, whether it be in your
24 personal or professional background that you

1 remember, or should anything come up through any
2 kind of unlawful influence that would effect
3 your ability, continued ability, to be impartial
4 to the accused and to ensure that he receives a
5 full and fair trial, I'm asking you: How would
6 you handle that situation, sir?

7
8 **Presiding Officer:** As I said earlier, if something I
9 recalled, I thought impacted on that, I would
10 notify counsel of that. And I quite frankly
11 can't conceive, short of a death threat, what
12 could influence me to throw the case, if you
13 will.

14
15 **APROS:** Now, if any government official purports to
16 call you and say --

17
18 **Presiding Officer:** I don't mean to be flippant about it,
19 but they can't shave my head and send me to
20 Okinawa anymore. As I said, I'm going to retire
21 1 July. I'm not promotable. I'm not going to
22 get promoted. I will retire a Colonel of
23 Marines. My retirement pay is fixed. There's
24 nothing that anyone can do to my career or

1 otherwise to influence that. Were someone to do
2 that, aside from me reporting it to whoever
3 their boss was or to the Appointing Authority, I
4 would obviously also make counsel aware of that
5 so you could all take whatever action you
6 thought was appropriate, either in the way of
7 voir dire or challenges or whatever you thought
8 was appropriate.

9
10 **APROS:** Sir, I thank you for answering those questions.

11
12 **Presiding Officer:** Captain Merriam, I know you want to
13 reserve voir dire.

14
15 Do you want to ask any questions at this point?

16
17 **DC:** No, sir.

18
19 **Presiding Officer:** All right. Government, do you desire
20 to exercise a challenge?

21
22 **APROS:** No, Your Honor, we do not.

23
24 **Presiding Officer:** Captain Merriam, do you want to

Hodges, Keith

From: Hodges, Keith [REDACTED]
Sent: Wednesday, March 15, 2006 3:46 PM
To: Bogar, Thomas, LTC, DoD OGC; Hodges, Keith
Cc: [REDACTED]

Subject: RE: U.S. v. Abdul Zahir - Defense request for clarification to PO2 , paragraph 3.f

LTC Bogar,

1. Paragraph 3f is designed to cause the parties to make a motion, if they wish, that addresses the wording of the Discovery Order. Col. Chester agrees that ".... the sentence at issue was intended to address only the four squares of the discovery order, its wording, the authority to issue it, and its requirements. For example, it was intended that the motion addressed in the paragraph might include: (1) that the Prosecution was required to provide more (or less in the view of the Prosecution) than what the order required, or (2) that the Defense was not required to provide any discovery, or required to provide less (or more in the view of the prosecution) than the Order required. It was not intended to preclude later discovery motions (i.e., motion to compel production, motion for extension to comply with discovery, or the like)."
2. Because getting discovery into the hands of the parties as soon as possible makes the entire process more efficient and tends to help surface other issues (motions to suppress, witness requests etc.,) the Presiding Officer desires motions addressing the Discovery Order to be made at the earliest possible opportunity. If a motion challenging the Discovery Order, its wording, the authority to issue it, and its requirements is not made when required by paragraph 3f of PO 2, a motion challenging the Discovery Order is waived.
3. As discovery progresses to include after the 3 April trial term, the parties may identify they need relief from the Presiding Officer other than a challenge as addressed by paragraph 3f, PO 2. A request to extend deadlines could be made as a special request for relief under POM 4-3. A motion for relief because a party did not comply with the terms of Discovery Order (i.e., not contesting the authority and wording of the Order, but just that the party did not comply,) or a motion to compel discovery might be made after the time provided for in paragraph 3f of PO 2. Be certain, however, that a motion to compel discovery asserting a category or type of information that Commission Law requires to be provided is a motion that should be made under paragraph 3f of PO 2 because it addresses the scope of discovery. If there is something that the Defense thinks should be required to be disclosed that is not contained in the Discovery Order, make a motion in accordance with paragraph 3f, PO 2.
4. You requested: "WHEREFORE, the undersigned military defense counsel for Abdul Zahir requests a clarification as to paragraph 3.f of PO2, to provide, *inter alia*, that routine pre-trial discovery motions, including but not limited to motion to compel or a request for extension of time to comply with discovery, will not be waived if said motion is not raised during the April 2006 Term." Consistent with what is contained above, motions to extend discovery deadlines, motions to compel discovery, or motions asserting violations of the Discovery Order are not waived if not made before the 3 April 2006 trial term. However, if the Defense is aware of a Discovery Order violation or has identified a need addressed by POM 7-1, that motion should be made as soon as the matter is known to include before the 3 Apr trial term. See POM 4-3.

RE 16 (Zahir)
Page 1 of 3

BY DIRECTION OF THE PRESIDING OFFICER

Keith Hodges
Assistant to the Presiding Officers
Military Commission

From: Bogar, Thomas, LTC, DoD OGC [REDACTED]
Sent: Wednesday, March 15, 2006 9:28 AM
To: 'Hodges, Keith'
Cc: [REDACTED]

Subject: U.S. v. Abdul Zahir - Defense request for clarification to PO2 , paragraph 3.f

Mr. Hodges -

A question has come up regarding the verbiage for paragraph 3.f to the Trial Order (i.e., PO2, submitted by email dated March 2, 2005) which provides in part:

"3.f. Motions. (If the parties request to defer motions - except a motion as to the wording, terms, and enforceability of the discovery order - the Presiding Officer advises he will grant the request. The Presiding Officer may also direct other, specific motions be made or waived. "

1. QUESTION: Does this language preclude relief in the form of a motion to extend discovery deadlines? Of particular concern are the words "except a motion as to the wording, terms, and enforceability of the discovery order."

2. The Government's discovery obligation is set by order for March 17, 2006. Defense has a reciprocal duty due April 17, 2006, almost two (2) weeks after the April 2006 Term. On review of those documents provided, the defense may require additional documents from the government and a motion to compel may be necessitated. On the other hand, on review of those documents, the defense may require additional time to corroborate statements, or conduct its own independent investigation, and a motion for extension may be needed.

3. I understand this issue had been broached previously in the matter of U.S. v. al Qhahtani.

4. In U.S. v. al Qhahtani, it is my understanding the APO said the sentence at issue was intended to address only the four squares of the discovery order, its wording, the authority to issue it, and its requirements. For example, it was intended that the motion addressed in the paragraph might include: (1) that the Prosecution was required to provide more (or less in the view of the Prosecution) than what the order required, or (2) that the Defense was not required to provide any discovery, or required to provide less (or more in the view of the prosecution) than the Order required. It was not intended to preclude later discovery motions (i.e., motion to compel production, motion for extension to comply with discovery, or the like).

RE 16 (Zahir)
Page 2 of 3

3/15/2006

5. The Defense respectfully requests a definitive ruling as to whether routine pre-trial discovery motions such as motions to compel, request for extensions to comply, or the like, will be waived if not raised during the April 2006 Term.

WHEREFORE, the undersigned military defense counsel for Abdul Zahir requests a clarification as to paragraph 3.f of PO2, to provide, *inter alia*, that routine pre-trial discovery motions, including but not limited to motion to compel or a request for extension of time to comply with discovery, will not be waived if said motion is not raised during the April 2006 Term.

Very respectfully submitted,

/Signature/

THOMAS J. BOGAR

LTC, JA, USAR

Military Counsel for Abdul Zahir

Thomas J. Bogar, LTC, JA
Office of Military Commissions
Office of the Chief Defense Counsel
[REDACTED]
Arlington, VA 22202
[REDACTED]
[REDACTED]

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**OFFICE OF MILITARY COMMISSIONS
DEPARTMENT OF DEFENSE
U.S. NAVAL STATION, GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA

v.

ABDUL ZAHIR

VOIR DIRE
OF
PRESIDING OFFICER

Case 06-0001
APRIL 2006 TERM

The Presiding Officer, Col. Chester, has answered the questions, following the questions, in upper case. This document shall be made a Review Exhibit.

In A and B below, the Presiding Officer has struck through various portions of the definitions to which he does not agree for purposes of answering the questions.

This document has been converted from Word to Adobe. As REs 14 and 15 are already Review Exhibits, there is no need to include them again with this document.

The accused, Abdul Zahir ("Accused") by and through the undersigned detailed military counsel, respectfully requests full and complete answers to the following interrogatories addressed to the detailed Presiding Officer, Colonel Robert S. Chester, USMC, ("PO"), for purposes of voir dire.

The following definitions shall apply:

- A. When used in this request, "you" shall include ~~not only the PO to whom said interrogatories are addressed, but also to any of said PO's authorized agents and assigns.~~
- B. "Know" ~~includes, but is not limited to personal knowledge AND casual acquaintance. or to knowledge about a person, place or thing whether it be through third persons, events, literary articles, books, periodicals, newspapers, television, internet sources, or word of mouth.~~
- C. These interrogatories supplement answers previously given by the PO in the matter U.S. v. Khadr. The answers previously given are now part of the record for U.S. v. Abdul Zahir, and are marked as RE 14 and RE 15. RE14 and RE15 are hereby attached as Exhibits "A" and "B", the substance of each are incorporated by reference hereto.
- D. The PO is requested to supplement answers given hereto or to those provided as RE 14 or RE 15, as he may deem necessary.

1. Do you know the accused, Abdul Zahir, for the case at bar? NO.
2. Do you know any person named in any of the charges referred against the Accused? This includes any alleged victim, co-accused, alleged co-conspirator, or any other person named in the charge sheet. NO.
3. Do you know any person named as a potential witness in any documents currently before the case at bar? I HAVE NO KNOWLEDGE OF POTENTIAL WITNESSES.
4. Do you know civilian Habeas counsel, Bob Gensberg, Esquire of St. Johnsbury, VT who is currently representing the accused in the pending matter captioned Abdul Zahir v. George W. Bush, et. al., U.S. District Court for the District of Columbia, Case 1:05CV01623 before the Honorable Colleen Kollar-Kotelly? NO.
5. Do you know:
 - a. Any of the officers detailed as military commission members ("Members") per Appointing Order 06-0001 dated January 18, 2006? NOT TO MY KNOWLEDGE.
 - b. Any of the Review Panel Members, to wit: Mr. Edward Biester, the Honorable Frank Williams, the Honorable William Coleman, and/or the Honorable Griffin Bell? NO.
6. Have you had, made, received, or participated in any dealings or communications with government counsel about law, facts, parties, representation, or procedure in this case? NOT OTHER THAN ISSUING ORDERS IN THIS CASE THROUGH E-MAIL. I HAVE HAD NO ORAL COMMUNICATIONS WITH COUNSEL. I HAVE MET AND EXCHANGED GREETINGS WITH THE CHIEF PROSECUTOR AND DEFENSE COUNSEL.
7. Have you had any dealings or communications with civilian or military defense counsel about law, facts, parties, representation, or procedure in this case? This includes communication with the Chief Prosecutor, Deputy Chief Prosecutor, or the Chief Defense Counsel. SAME AS 6 ABOVE.
8. Do you have any prior knowledge of the facts of this case, or of the alleged acts of the accused in this case? NO.
9. Has any prior knowledge of the facts of this case in conjunction with the events of 9/11/01 incline you towards any disposition in such a manner where you may find it difficult to rule without bias on matters of law that may come before you in this matter? NO.

10. You are familiar with the Commission Procedural Rules, other wise referred to as the "POMs". Are there any instances when a Presiding Officer should or must raise a motion, sua sponte? ASK IN COURT.

11. Do you believe that the high level of media scrutiny may effect the manner in which you would normally preside as a Military Judge? NO. I AM NOT SERVING AS A MILITARY JUDGE IN THIS CASE, BUT AS A PRESIDING OFFICER. MEDIA SCRUTINY WILL IN NO WAY EFFECT MY ACTIONS.

12. In light of the release of your name to the public via the Department of Defenses website do you have any concerns (*inter alia*, safety, media scrutiny, effect upon your family or future career) regarding your participation in this process? NO.

13. Prior to your appointment as the PO did you receive a security brief regarding your participation? NO.

14. Please list the organizations whether social, professional, ideological or political to which you claim membership. IDAHO AND CALIFORNIA BARS.

15. Generally speaking, what areas of law will be particularly relevant throughout the Military Commission process? ASK ME IN COURT.

16. During the JAN 2006 Term, you indicated that if not for this position, you would have retired from the USMC on or about April 2006. What is your anticipated retirement date currently? I WILL RETIRE 30 JUNE 2006 BUT WILL BE VOLUNTARILY CONTINUED ON ACTIVE DUTY UNTIL JUNE 2007

17. Do you have any professional plans or objectives following your retirement from the USMC? FIND A JOB.

18. Have you submitted any job applications, resumes, CVs or the like to any Federal Government agencies, departments, bureaus, or the like, with the prospect of securing employment following your eventual retirement? YES. USMC AND DEPARTMENT OF JUSTICE. THESE WERE SUBMITTED PRIOR TO MY SELECTION AS A PO AND WHEN I ANTICIPATED RETIRING IN 2006. THE DOJ APPLICATION IS STILL PENDING AND WAS UPDATED AFTER MY SELECTION TO REFLECT MY CURRENT STATUS. THE JOB SOUGHT IS AS AN IMMIGRATION JUDGE.

19. Within the last year do you, or have you, had any political aspirations, whether that is running for elected office, or political appointment? NOT OTHER THAN A JUDICIAL POSITION.

20. Other than the Law of Armed Conflict course you took in 1982, have you taken any other legal education courses which you feel may be relevant to your

understanding of the issues potentially involved in the Military Commission Process? YES. ALL OF MY CONTINUING LEGAL EDUCATION COULD CONCEIVABLY IMPACT THE PROCESS. NONE OF THE CLES, EXCEPT FOR THE LAW OF WAR TRAINING AT CHARLOTTESVILLE IN JANUARY 2006, HAD ANYTHING TO DO WITH COMMISSION PRACTICE.

21. Have you received any training regarding any of the following: SEE ANSWER C6 OF KHADR ANSWER.

- a. Al Qaeda and other alleged terrorist organizations?
- b. The Taliban?
- c. Islamic Fundamentalism?
- d. Detainee Operations
- e. Other related topics?

22. Have you read any articles, whether they be law review or news, regarding Military Commissions? YES. TO MANY TO LIST.

23. Other than as above, do any answers need to be changed or supplemented to those provided during the JAN 2006 Term?

YES. B5. 1 MARINE EXPEDITIONARY BRIGADE IS A SUBPART OF I MEF AND DEPLOYED AS A PART OF THE WAR IN AFGHANISTAN. THE COMMANDER SERVES ALSO AS THE DEPUTY MEF COMMANDER. I GAVE HIM NO ADVICE CONCERNING ACTIONS IN AFGHANISTAN. HE WAS DEPLOYED TO EGYPT FOR A TRAINING OPERATION WITH HIS OWN JUDGE ADVOCATE. HIS JUDGE ADVOCATE WAS ALSO MY DEPUTY. THE DEPUTY MEF COMMANDER DEPLOYED TO AFGHANISTAN PRIOR TO HIS RETURN TO CONUS AND WE NEVER DISCUSSED OPERATIONS IN AFGHANISTAN.

Very Respectfully,

/S/

THOMAS J. BOGAR
LTC, JA, USAR
Detailed Defense Counsel for
Abdul Zahir

Index of Current POMs – April 4, 2006

See also: http://www.defenselink.mil/news/Aug2004/commissions_memoranda.html

Number	Topic	Date
1 - 2	Presiding Officers Memoranda	September 14, 2005
2 - 2	Appointment and Role of the Assistant to the Presiding Officers	September 14, 2005
3 - 1	Communications, Contact, and Problem Solving	September 8, 2005
4 - 3	Motions Practice	September 20, 2005
5 - 1 *	Spectators at Military Commissions	September 19, 2005
6 - 2	Requesting Conclusive Notice to be Taken	September 9, 2005
7 - 1	Access to Evidence, Discovery, and Notice Provisions	September 8, 2005
8 - 1	Trial Exhibits	September 21, 2005
9 - 1	Obtaining Protective Orders and Requests for Limited Disclosure	September 14, 2005
10 - 2	Presiding Officer Determinations on Defense Witness Requests	September 30, 2005
11	Qualifications of Translators / Interpreters and Detecting Possible Errors or Incorrect Translation / Interpretation During Commission Trials	September 7, 2005
12 - 1	Filings Inventory	September 29, 2005
13 - 1 *	Records of Trial and Session Transcripts	September 26, 2005
14 - 1 *	Commissions Library	September 8, 2005
(15)	There is currently no POM 15	
16	Rules of Commission Trial Practice Concerning Decorum of Commission Personnel, Parties, and Witnesses	February 16, 2006
(17)	There is currently no POM 17	
18	8-5 Conferences	March 21, 2006

* - Also a joint document issued with the Chief Clerk for Military Commissions.

ZAHIR
REVIEW EXHIBIT 19

Review Exhibit (RE) 19 is curriculum vitae of Translators “A” and “B.”

RE 19 consists of 7 pages.

Translators A and B have requested, and the Presiding Officer has determined that **RE 19** not be released on the Department of Defense Public Affairs web site. In this instance Translators A and B’s right to personal privacy outweighs the public interest in this information.

RE 19 was released to the parties in *United States v. Zahir*, and will be included as part of the record of trial for consideration of reviewing authorities.

I certify that this is an accurate summary of **RE 19**.

//signed//

M. Harvey
Chief Clerk of Military Commissions

التهجمات:
مؤامرة؛ مناصرة العدو؛
مهاجمة مدنيين

عبد الظاهر

المعروف أيضا باسم عبد الباري

الولاية القضائية

1. الولاية القضائية لهذه الهيئة العسكرية تستند على قرار الرئيس بتاريخ 6 يوليو تموز 2004 الذي يقضي بأن عبد الظاهر (المعروف أيضا باسم عبد الباري والمعرف بعدها في هذا النص باسم "عبد الظاهر") يخضع لأمره العسكري المؤرخ 13 نوفمبر تشرين الثاني 2001.

2. إن التهمة الموجهة ضد عبد الظاهر خاضعة لمحاكمة الهيئة العسكرية.

ادعاءات عامة

3. لقد أسست القاعدة من قبل اساما بن لادن وغيره في أو حوالي سنة 1989 بهدف معارضة بعض الأنظمة والرسميين بالقوة والعنف.

4. يعرف اساما بن لادن كامير أو قائد القاعدة.

5. إن هدف أو غاية القاعدة، كما ذكر اساما بن لادن وغيره من زعماء القاعدة، هو دعم الهجمات العنيفة ضد الممتلكات والمواطنين (العسكريين والمدنيين سواء) التابعين للولايات المتحدة وغيرها من البلدان لكي ترغب الولايات المتحدة أن تجلي جنودها من شبه الجزيرة العربية واقتصاصا لمناصرة الولايات المتحدة إسرائيل، وغيرها من الأمور.

6. إن عمليات وأعمال القاعدة تدار من مجلس شوري مؤلف من لجان تشمل الآتي: لجنة سياسية؛ لجنة عسكرية؛ لجنة أمنية؛ لجنة مالية؛ لجنة اعلامية؛ ولجنة دينية / قضائية.

7. ومن سنة 1989 حتى سنة 2001 اقامت القاعدة معسكرات تدريب وديار الضيافة وأعمال تجارية في أفغانستان وباكستان وغيرها من البلدان للتدريب وموازة هجمات عنيفة ضد الممتلكات وكل من المواطنين العسكريين والمدنيين التابعين للولايات المتحدة وبلدان أخرى.

8. وفي اغسطس آب 1996 شرع اساما بن لادن باصدار "بيان عام للجهاد ضد الامريكيين" يحث فيه على قتل منتسبي الجيش الامريكي الذين يعملون في المملكة العربية السعودية.

9. وفي فبراير شباط 1998 قام اساما بن لادن وايمن الزواهري وغيرهم باعلان فتوى تحت راية "الجبهة الاسلامية الدولية للجهاد ضد اليهود والصليبيين" تستلزم جميع المسلمين القادرين على ذلك ان يقتلوا الامريكيين وحلفائهم المدنيين والعسكريين سواء حيثما يجدونهم وان "يسلبوا اموالهم".

10. وفي او حوالي 29 مايو ايار 1998 اصدر اساما بن لادن بيانا عنوانه "القنبلة الذرية الاسلامية" تحت راية "الجبهة الاسلامية الدولية للجهاد ضد اليهود والصليبيين" حيث قال "انه فرض على المسلمين ان يقدموا بما لديهم من قوة لارهاب اعداء الله".

11. ومنذ سنة 1989 قام بعض اعضاء او مناصرين القاعدة وهم معروف في الهوية او مجهولين في تنفيذ العديد من العمليات الارهابية، منها على سبيل المثال لا الحصر: الهجمات ضد السفارات الامريكية في كنيا وتنزانيا في اغسطس آب 1998؛ العدوان على ال يو اس اس كول في اكتوبر تشرين الاول 2000 وهجمات 11 سبتمبر ايلول 2001 ضد الولايات المتحدة.

التهمة الاولى: المؤامرة

12. شرع عبد الظاهر (المعروف ايضا باسم عبد الباري) في افغانستان وغيرها من البلاد من او حوالي 1997 الى او الى حوالي يوليو تموز 2002 عمدا وبمعرفة تامة في مناصرة منظمة اشخاص يشاركون هدفا اجراميا مشتركا ويتواطون ويتفقون مع اساما بن لادن وشيخ سعيد المصري وعبد الهادي العراقي (المعروف ايضا ب"قطيبا") ومحمد داوود وعبد الوكيل السومالي وعبد الرؤوف ومحمد آغا ومحمد رحيم وعبد الكبير (المعروف ايضا باسم كاري بلال والمعروف ايضا باسم زيلي غول) وعبد الحكيم وعبد المالك وعبد الكيوم وسعيد احمد آغا واعضاء ومناصرين آخرين لمنظمة القاعدة، معروف في الهوية او مجهولين، لارتكاب الجرائم الآتية التي تخضع لمقاضاة الهيئة العسكرية: الهجوم على مدنيين؛ الهجوم على اهداف مدنية؛ القتل عمدا بواسطة محارب بدون امتيازات؛ تدمير املاك بواسطة محارب بدون امتيازات؛ ومن ثم الارهاب. وقد حصل ذلك السلوك في سياق وموازة صراع مسلح.

13. ومن أجل موازنة هذا المشروع وتلك المؤامرة بادر عبد الظاهر واعضاء آخرين من القاعدة الى ارتكاب تلك الاعمال السافرة:

أ. في سنة 1997 عمل عبد الظاهر كمترجم للطالبان في دار غادا العام للضيافة في كابول حيث مارس ذلك العمل لمدة سنة واحدة. وكان ينال 1000 الى 1500 روبي باكستاني شهريا كراتب لعمله هذا. وقد اصطفى بعدها لكي يعمل كمترجم وساعي نقود في خدمة عبد الهادي العراقي، وكان هذا الأخير قائد ومحاسب في القاعدة ويدير دار إشارة للضيافة في منطقة كرت ابروان في كابول، افغانستان.

ب. وقد دفع عبد الظاهر رواتب لأعضاء القاعدة واقتنى مواد غذائية ولوازم لدار إشارة للضيافة. ومقابل خدماته هذه تقاضى عبد الظاهر من القاعدة معاش إضافي يوازي 4000 روبي باكستاني شهريا.

ج. وفي عقب 11 سبتمبر أيلول 2001 صرح عبد الهادي العراقي لكل من عبد الظاهر وغيره من الاعضاء العرب في القاعدة أن يخفوا الحقيقة عن الأفغانيين حيال مسؤولية القاعدة في هجمات 11 سبتمبر أيلول 2001.

د. وفي أوائل سنة 2002 رحل عبد الظاهر من لووغار في أفغانستان إلى بشاوار في باكستان والتحق بعبد الهادي العراقي وغيره لتصميم هجمات بالمتفجرات ضد القوات الأمريكية ومدنيين أجنيين في أقاليم زورمات وباكثيا في أفغانستان. وقد مكث عبد الظاهر مع خليته الارهابية حتى اعتقاله في يوليو تموز 2002.

ه. وقد اقتنى عبد الظاهر مقابل مبلغ يوازي حوالي 60000 روبي باكستاني آلة نسخ لانتاج كمية كبيرة من النشرات المعادية للأمريكيين. وكان هدف تلك النشرات هو تجنيد أفغانيين معادين للأمريكيين ويقطنون في جوار السفارة الأمريكية في كابول بأفغانستان وبالقرب من القواعد العسكرية الأمريكية في باغرام وغاردرس في أفغانستان لتصميم وإجراء عمليات ضد الجنود الأمريكيين ولنشر الدعاية المعادية للأمريكيين.

و. وقد عهدت القاعدة عبد الظاهر ب 50000 دولار وأوصته أن يستعمل هذا المبلغ لكي يمول أعمال ارهابية ضد قوات الائتلاف. ولغرض موازنة الاعمال الارهابية قام عبد الظاهر في ظل ست مناسبات منفصلة بتقديم أموال لأعضاء آخرين ينتمون الى الخلية الارهابية. وعلاوة على ذلك فقد أعد سجل الحسابات حيث فصلت المعاملات النقدية لموازنة العمليات الارهابية.

ز. ومن ثم أضفت القاعدة هاتف لاسلكي لعبد الظاهر إضافة الى قائمة بالاسماء المستعارة عن أعضاء الخلية الارهابية واسماؤهم الصحيحة. ولكي يتفادوا الكشف من قبل قوات الائتلاف قام أعضاء الخلية الارهابية ومن بينهم عبد الظاهر باستعمال أسماء مستعارة في مكالماتهم. وقد استخدم عبد الظاهر الهاتف واسماء مستعارة للمكالمة مع أعضاء الخلية الارهابية وأبلغهم عن مهمات قادمة وعن امور لوجيستية وعن معاملات تجارية.

ح. وفي أو حوالي 4 مارس آذار 2002 شرع عبد الظاهر وعبد الكبير وعبد الحكيم في تنفيذ عملية ارهابية في زرمات بأفغانستان تهدف عربية مارة تقل مدنيين أجانب يرحلون لجهة الشمال الى غاردرز في أفغانستان. وقد رموا قنبلة يدوية من نافذة هذه العربة وأضروا في ذلك الصحفيين الثلاثة الذين كانوا في داخلها.

ي. وفي يوليو تموز 2002 عندما القي القبض عليه في لووغار بأفغانستان كان في حوزة عبد الظاهر ما يوازي 10000 دولار أمريكي تقريبا فضلا عن آلة نسخ وسجل الحسابات.

التهمة الثانية: مناصرة العدو

14. شرع عبد الظاهر (المعروف أيضا باسم عبد الباري) في أفغانستان من سنة 1997 تقريبا الى يوليو تموز 2002 عمدا بموازنة العدو مثل القاعدة والطالبان، وقد حصل ذلك السلوك في سياق وموازاة صراع مسلح.

التهمة الثالثة: مهاجمة مدنيين

15. شرع عبد الظاهر (المعروف أيضا باسم عبد الباري) في أو حوالي 4 مارس آذار 2002 كمقترف جريمة وشريك في التآمر وعضو في منظمة أشخاص يقتسمون غرض إجرامي مشترك وكمناصر أو ميسر، أو في أي من تلك الأدوار المذكورة آنفاً، في مهاجمة مدنيين كانوا يتحركون إلى الشمال في اتجاه غارديز بـافغانستان في عربة مارة، وقد حصل ذلك السلوك في سياق وموازة صراع مسلح.

الزامونه دادي: دسپسه جوړول له دښمن سره مرسته کول په ملکي خلکو باندې حملې کول	دامرپکا متحده ایالات د عبدالظاهر مشهور په عبدالباري په مقابل کې دعوا داپروي
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دمحکمي قانوني او قضايي صلاحيت

۱ : ددې نظامي کومپسبون (محکمي) صلاحيت د جمهوررئيس پر هغه فېصله باندې بناد ي چې د دوه زره څلورم مېلادي کال د جولای په شپږمه نېټه يې کړې وه، دهغي پر اساس عبدالظاهر مشهور په عبدالباري چې تردې وروسته به د عبدالظاهر په نامه يادېږي، د هغه نظامي حکم تابع دی چې د يو د پاسه دوه زره مېلادي کال د نومبر د مېاشتې په دېارلسمه نېټه صادر سوی و.

۲ : هغه الزامونه چې په عبدالظاهر باندې لگول سويدي دهغو پر بنا دی په نظامي محکمه يا کومپسبون کې محاکمه کېدلی سي.

عمومي ادعاګانې

۳ : دالقاعده شبکه، اسامه بن لادن او يو شمېر نورو په نولس سوه او نهه اتيا او يا دهمدې وخت په شلو خوا کې ددې مقصد لپاره جوړه کړې وه چې له يو شمېر حکومتونو او چارواکو سره په مخالفت کې له قوت او تشدد نه کارواخلي.

۴ : اسامه بن لادن د القاعده د امېر او مشر په حيث پېژندل شويدي .
۵ : د القاعده مقصد اسامه بن لادن او د القاعده نورو مشرانو داسې بيان کړېدې چې د امريکا دنظاميانو ، ملکيانو او مال او چاپېداده په مقابل کې له تشدد نه ډکو حملو ملاتړ وکړي. د القاعده په دغه مقصد کې له امريکا نه علاوه نور هېوادونه هم شامل دي. ددې کار يو هدف (دنورو اهدافو تر څنگ) دادی چې امريکا دېته مجبوره کړی چې خپلې قواوې د عربستان له (شبه جزيره) يا جزيره نما نه وباسي. د القاعده بل مقصد دادی چې له امريکا نه په دې خاطر انتقام واخلی چې داسراپېلو ملاتړ کوی.

۶ : د القاعده عمليات او فعاليتونه د پوې شوري له خوانه اداره کېږي. دغه شوري له څوکومېتونه جوړه شوېده او په هغو کې سپاسی کومېته ، نظامی کومېته، امنيتی کومېته ، مالی کومېته ، د مطبوعاتو کومېته، د مذهبي چارو او قانونی کومېتي شاملی دی.

۷ : د نولس سوه او نهه اتيا او يو دپاسه دوه زره کلونو تر منځ القاعده په افغانستان ، پاکستان او نورو هېوادونوکې د نظامي روزنی کمپونه، مېلمستونونه ، مهمانخانه او خپل کاروباری مرکزونه تاسيس او کارونه شروع کړل. ددې اقداماتو مقصد داو چې دامريکا اونورو هېوادونو د چاپېداده او اتباعو پر خلاف ، که نظامی وي او که ملکي ، د تشدد نه ډکو حملو په خاطر روزنه ، تربيه او ملاتړ برابر کړی.

۸ : د نولس سوه او شپږ نوی مېلادی کال د اگست په مېاشت کې اسامه بن لادن د امریکا پانو پر خلاف د جهاد اعلان وکړ. په دغه اعلان کې هغه دا غوښتنه وکړه چې د امریکا هغه نظامي پرسونل دي ووژل شي چې د عربستان په شېبه جزیره کې ماموریت کوي.

۹ : د نولس سوه او اته نوي مېلادی کال د فبروري په مېاشت کې اسامه بن لادن او اېمن الظواھري او نورو (پھودانو او صلیبیانو سره د جگړې ، نړېوال اسلامي محاذ) تر بېرغ لاندې پوه فتوی صادر کړه او په هغې کې یې پر ټولو مسلمانانو دالازمه وبلله چې که په وسه یې پوره وي چې امریکا پان (که ملکبان وي که نظامیان) هر چیرته چې پیدا کېږي وژني او مال یې تالا او غنېمت کړي.

۱۰ : د مې د مېاشتي د نهه وېشتمې په شاو خواکې په نولس سوه او اته نوی مېلادی کال کې اسامه بن لادن پو خبر لېک خپور کړ چې عنوان یې (داسلام ا تومي بم) و. دا خبر لېک هم د(پھودانو او صلیبیانو سره د جگړې ، نړېوال اسلامي محاذ) تر بېرغ لاندې خپور سو . په دغه خبر لېک کې هغه وېلي وو چې دا د هر مسلمان وظیفه ده چې تر خپلې وسي پوري په دې خاطر قوت برابر کړي چې د خدای ددښمنانو په تهدېد او تخویف کې ترېنه کار واخلی .

۱۱ : د نولس سوه او نهه اتېا مېلادی کال راهېسي د القاعده غړېو او ملگرو په پټه او ښکاره څو ترورېستي حملې کړېدې، چې په هغو کې دهمدغه کال د اگست په مېاشت کې په کېنېا او تانزانېا کې د امریکا د سفارت پر خلاف حملې شاملې دي. پر دې سربېره د امریکا د پو اېس اېس کول پر بېړۍ باندې په دوه زرم کال کې حمله او پر امریکا باندې په بودپاسه دوه زرم مېلادی کال کې د سپټمبر د مېاشتي په پوولسمه نېټه باندې حملې هم شاملې دي خوتولي په همدې حملو پوري محدودې ندې.

لومړی الزام : ددسېسي جوړونه

۱۲ : عبدالظاھر چې په عبدالباري باندې په افغانستان او نورو هېوادونو کې شهرت لري د نولس سوه او اوه نوي مېلادی کال نه راپدې خوا د دوه زره او دوېم مېلادی کال د جولای تر مېاشتي پوري او پا په همدې کلونو کې په خپله خوښه او اراده دهغو خلکو په ډله کې شامل سو چې گډ جنایي اهداف یې لرل. له اسامه بن لادن، شېخ سعېد المصري ، عبدالهادي العراقي مشهور په قتيبه ، محمد داود، عبدالوکېل السومالي عبدالروف محمداقا ، محمد رحېم ، عبدالکېبر، مشهور په قاري بلال ، مشهور په ډېلي گل ، عبدالحکېم ، عبدالمالک ، عبدالقېوم، او سعېد احمد اغا او د القاعده ډلې له نورو غړېو او اندېوالانو سره په دې دسېسه کې شریک سواو موافقه یې وکړه چې دا سي حملې وکړي چې هغه په نظامي محکمه پا نظامي کومېسېو ن کې د محاکمې وړدي:

په ملکبانو باني حملې، په ملکي شېبانو باندې حملې ، د خلکو ناحقه قتلول، د مال او شتمني تخرېب، بې له ډېنه چې د جنگ او تخرېب قانوني حق ولري، ددهشتگرې کول. دا وېل شوي کارونه د وسله والو شخړو سره اړېکي لري.

۱۳ : ددغو خطرناکو دسېسو د پر مخ بېولو لپاره عبدالظاھر او دالقاعده نورو غړېو دا لاندېني ښکاره اعمال سرته رسولي دي:

الف : په نولس سوه او اوه نوي کي عبدالظاهر د طالبانو لپاره د افغانستان په کابل کي د جادي په عمومي مهمانخانه کي د تر جمان په حبث ېوکال کار وکړ. ده ته د تر جمانی لپاره د مېاشتي له زرو نه نېولي تر ېو زر او پنځه سوه پاکستانېو روپېو پوري ورکول کېدلې. وروسته بېا دی د تر جمان او پېسو د انتقالوونکي په حبث د عبدالهادي عراقي لپاره وټاکل سو. عبدالهادي عراقي د القاعده قوماندان او محاسب و او دافغانستان د کابل په کارته پروان کي د اشاره په نامه مېهمانخاني مشري ېې په غاړه وه.

ب: عبدالظاهر به دالقاعده غړېو ته تنخواه گاني ورکولي او داشاره په نامه مېهمانخاني لپاره به ېې خوراكي مواد او نور د ضرورت وړ شېان په بېه اخېستل. ددې کار په بدل کي القاعده عبدالظاهر ته د مېاشتي نورې څلور زره پاکستانې روپې هم ورکولي.

ت: په ېو دپاسه دوه زرم مېلادي کال کي د سپتمبر د ېوولسمي نېټي نه لنډه موده وروسته عبدالهادي عراقي، عبدالظاهر او د القاعده نورو غړېو ته ووپل چي افغانانو ته په ېو دپاسه دوه زرم مېلادي کال کي د سپتمبر د ېوولسمي نېټي د حملو په باب درواغ ووايي او ورته ووايي چي القاعده په دې حملو کي مسووليت نه درلود.

ث : ددوه زره دوېم مېلادي کال په اولو مېاشتو کي عبدالظاهر د افغانستان د لوگر له ولايت نه د پاکستان د پېښور علاقې ته سفر وکړ او هلته له عبدالهادي عراقي او نورو سره په دې خاطر پوځاي سو چي دزرمت اود پکتېا په سېموکي د امرېکا د قواو او خارجي ملکېانو پر خلاف د حملو پلان جوړکړي. عبدالظاهر له دغې دهشتگري بلگي سره تر هغه وخت پوري پاتي سو څو چي د دوه زره دوېم کال د جولای په مېاشت کي ونېول سو.

پ : عبدالظاهر تقريبا په شپېته زره پاکستانېو روپېو باندې د فوتو کاپي ېو ماشين ددې لپاره واخېست چي د امرېکا پر خلاف شېنامي (پاني) په زبات شمېر کي چاپ کړي سي. دا پاني ېا شېنامي داسي لېکل سوي وې چي د امرېکا خلاف هغه افغانان چي په کابل کي د امرېکا سفارت ته نېژدې اوسېدل او ېا په افغانستان کي د امرېکا نظامي اډو ته په بگرام او گردېز کي نېژدې اوسېدل را جلب او استخدام کړي ځي د امرېکا د عسکرو خلاف د عملېاتو پلان جوړ او عملي کړي او د امرېکا خلاف پروپاگند هم وکړي.

ټ : القاعده عبدالظاهر ته پنځوس زره ډالر ورکړل او دا هدايت ېې ورته وکړ چي دا پېسي د اپتلاف دقواو پر خلاف دهشتگري د اعمالو لپاره ولگوي. عبدالظاهر د ترورېستي عملېاتو د مالي ملاتړ په خاطر لږ تر لږه شپږ ځلي په جلا جلا ډول د نورو ترورېستي ډلگېو غړېو ته پېسي ورکړلي. پردې سر بېره هغه له خان سره د حساب ېو داسي کتاب هم ساتلو چي د ترورېستي عملېاتو لپاره دورکړل سوو روپېو حساب په تفصيل سره پکي لېکل سوي و.

څ: القاعده عبدالظاهر ته ېو لاسي تېلېفون او دهشتگرو د ډلگېو لېست، دهغوي د مستعارو نومونو لېست او داسي لېست چي دهغوي داصلي نومونو پته ترېنه لگېدله هم ورکړي و. ددې لپاره چي د اپتلاف قواو ته پته ونه لگېږي دهشتگري د ډلگېو غړېو د عبدالظاهر په شمول په خپلو مخابرو کي مستعار نومونه استعمالول. عبدالظاهر له تېلېفون او د مستعارو نومونو له لېست

نه دا استفاده كوله چې د ترورپستی د لگېو له نورو غړېو سره خبرې وكړي او له راتلونكېو عملیاتو، لوژېستېكې چارو، او نورو معاملو نه ېې خبر كړي.

چ : ددوه زره دوېم كال د مارچ په څلورمه اويا همدې ته نېژدې وخت كې عبدالظاهر ، عبدالكېپر او عبدالحكېم د افغانستان د زرمټ په سېمه كې پرېوه داسې موټر باندې ترورپستی عملیات وكړل چې خارجي ملكېان پكې سپاره وو او د افغانستان د گردېز دسېمې په لور ېې سفر كاوه. دوى له كركې نه ېو لاسى بم دغه موټر ته دننه وړ و غورځاوه او درى خبريالان ېې زخمېان كړل.

ح : عبدالظاهر چې ددوه زره دوېم مېلادى كال د جولای په مېاشت كې ، د افغانستان د لوگر په ولايت كې ونېول شو له هغه سره تقريبا لس زره امرېكايى ډالر، د فوټو كاپى ېو ماشېن او د محاسبى ېو كتاب موجود و.

دوېم الزام : له دېنمن سره مرسته كول

۱۴ : عبدالظاهر چې په عبدالبارى هم شهرت لرى په افغانستان كې د نولس سوه او اوه نوى مېلادى كال په شاوخواكې او د دوه زره دوېم كال د جولای تر مېاشتې پورې په لوى لاس قصدا او عمدا له دېنمن سره مرسته وكړه او دېنمن القاعده او طالبان وو. دا اعمال د وسله والو شخړو په ترڅ كې او پاورسره په ارتباط كې سرته رسېدلى دى.

درېم الزام : پر ملكېانو باندې حمله كول

۱۵ : عبدالظاهر چې په عبدالبارى هم شهرت لرى په افغانستان كې ددوه زره دوېم مېلادى كال د مارچ د مېاشتې په شاوخواكې د جرم د مرتكب ، په دسېسه او طوطېه كې د شړپك او مرستېال، دداسې اشخاصو دېلگى دغري په حبث چې گډ جنايى اهداف ېې لرل، د كومك كوونكې او تر بېه كوونكې او پاېې په دې ټولو كارونوكې دلاس لرونكې په حبث پر هغو ملكى خلكو حملې كړېدې چې په افغانستان كې ېې په ېوه موټر كې شمال ته د گردېز په لور سفر كاوه. دا اعمال د وسله والو شخړو په ترڅ كې او پاورسره په ارتباط كې سرته رسېدلى دى.

a/k/a Abdul Bari

SERVICE OF CHARGES

I hereby certify that on 4 February 2006, I served a copy of the subject charge sheet, in English, Pashto, and Arabic, to the accused in the case of United States v. Abdul Zahir.

Appointing Authority Attorney Manager



OFFICE OF THE
CHIEF PROSECUTOR

OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

February 24, 2006

MEMORANDUM FOR CAPTAIN [REDACTED] USAFR
MAJOR [REDACTED] USA
CAPTAIN [REDACTED] USA
LIEUTENANT [REDACTED] USN

SUBJECT: Detailed Prosecutors

Consistent with my authority as Chief Prosecutor and the provisions of Sections 4B(2) of Military Commission Order No. 1, dated August 31, 2005, and Section 3B(9) of Military Commission Instruction No. 3, dated July 15, 2005, the above named counsel are detailed and designated in the case of U.S. v. Zahir as follows:

United States v. Zahir

Detailed Prosecutor:

Captain [REDACTED]

Detailed Assistant Prosecutors:

Major [REDACTED]

Captain [REDACTED]

Lieutenant [REDACTED]

MORRIS D. DAVIS
Colonel, U.S. Air Force
Chief Prosecutor
Office of Military Commissions

cc:

Deputy Chief Prosecutor

Filings Inventory – US v. Zahir

PUBLISHED:

Issued in accordance with POM #12-1.
See POM 12-1 as to counsel responsibilities.

This Filings Inventory includes only those matters filed since 4 Nov 2005.

Prosecution (P designations)

Name	Motion Filed	Response	Reply	Status /Disposition/Notes OR = First filing in series Letter indicates filings submitted after initial filing in the series. R=Reference	RE
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Defense (D Designations)

Dates in red indicate due dates

Designation Name	Motion Filed / Attachs	Response Filed / Attachs	Reply Filed / Attachs	Status /Disposition/Notes OR = First filing in series Letter indicates filings submitted after initial filing in the series. Ref=Reference	RE
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PO Designations

Designation Name (PO)	Status /Disposition/Notes ORIG = First filing in series Letter indicates filings submitted after initial filing in the series. Ref =Reference	RE
PO 1: Discovery Order, 1 Mar	<ul style="list-style-type: none"> • Prosecution requested extension of discovery deadline to 17 April. No defense objection. PO granted extension on 20 Mar 06. 	OR - 11
PO 2: Trial Order, 2 Mar	<ul style="list-style-type: none"> • A. Requests for extensions and PO decision. (Prosecution emailed they had no objection to the defense request.) • NOTE: Defense requested clarification of PO 2 and effect on 24 April session. PO replied. See RE 16. 	OR – 12 A - 13
	<ul style="list-style-type: none"> • 	
	<ul style="list-style-type: none"> • 	
	<ul style="list-style-type: none"> • 	

PROTECTIVE ORDERS

Pro Ord #	Designation when signed	Signed Pages	Date	Topic	RE
	Protective Order # 1	1	31 Jan 06	ID of all witnesses	7
	Protective Order # 2	2	31 Jan 06	ID of investigators	8
	Protective Order # 3	3	31 Jan 06	FOUO and other markings	9

Inactive Section

Prosecution (P designations)

Name	Motion Filed	Response	Reply	Status /Disposition/Notes OR = First filing in series Letter indicates filings submitted after initial filing in the series. Ref=Reference Notes	RE
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Inactive Section

Defense (D Designations)

Designation Name	Motion Filed / Attachs	Response Filed / Attachs	Reply Filed / Attachs	Status /Disposition/Notes OR = First filing in series Letter indicates filings submitted after initial filing in the series. Ref=Reference	RE
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Inactive Section

PO Designations

Designation Name (PO)	Status /Disposition/Notes OR = First filing in series Letter indicates filings submitted after initial filing in the series. Ref =Reference	RE